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COMMITTEE OF IMPERIAL DEFENCE (2)

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REPORT
AND
PROCEEDINGS
OF A
SUB-COMMITTEE OF THE COMMITTEE
OF
IMPERIAL DEFENCE
APPOINTED TO CONSIDER
THE QUESTION OF FOREIGN ESPIONAGE
IN THE UNITED KINGDOM.
1909.

Printed for the Committee of Imperial Defence. October 1909.

SECRET.

REPORT AND PROCEEDINGS

OF A

SUB-COMMITTEE OF THE COMMITTEE OF IMPERIAL DEFENCE

APPOINTED TO CONSIDER

THE QUESTION OF FOREIGN ESPIONAGE IN THE UNITED KINGDOM.

*2, Whitehall Gardens,
July 24, 1909.*

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FOREIGN ESPIONAGE.

TERMS OF REFERENCE.

THE Prime Minister desires that a Sub-Committee, composed as follows :—

Mr. Haldane (*Chairman*),
Mr. McKenna,
Mr. Gladstone,
Mr. Buxton,
Lord Esher,
Sir Charles Hardinge,
Sir G. Murray,
Admiral Bethell,
General Ewart,
General Murray, and
Sir E. Henry,

Sir C. L. Ottley (*Secretary*),

shall meet and consider such evidence as may be brought before them regarding the nature and extent of the foreign espionage that is at present taking place in this country, and the danger to which it may expose us, and shall report :—

- (1.) Whether it is desirable that the Admiralty and the War Office should be brought into official relations with the Police, Postal and Customs authorities, with a view to the movements of aliens suspected of being spies or secret service agents being properly supervised.
- (2.) If such official relations are desirable, in what manner can they best be established.
- (3.) Whether it is desirable to increase the powers that we now possess of dealing in times of emergency with persons suspected of being spies or secret service agents.
- (4.) Whether any alteration is desirable in the system at present in force in the Admiralty and the War Office for obtaining information from abroad.

March 25, 1909.

REPORT.

(C.I.D. Paper 47-A.)

THE Sub-Committee was formed at the request of the General Staff, who regard with apprehension the increasing amount of German espionage that is taking place in this country, and consider it desirable that both the Admiralty and the War Office should be afforded greater facilities than are at present at their disposal for ascertaining the precise nature and scope of this movement.

2. It therefore devolved on the General Staff and the Admiralty to produce such evidence as they possessed of foreign espionage, in order to show that it is desirable for those Departments to be brought into official relations with the Police, Postal, and Customs authorities, with a view to the movements of aliens suspected of being spies or secret service agents being properly supervised. The Sub-Committee were also requested in their terms of reference to consider whether it was desirable to increase the powers that we now possess of dealing in times of emergency with persons suspected of being spies or secret service agents, and further to report whether any alteration is desirable in the system at present in force in the Admiralty and the War Office for obtaining information from abroad.

The evidence produced to the Sub-Committee.

3. The Sub-Committee had the advantage of hearing from Colonel J. E. Edmonds, General Staff, the methods usually adopted by foreign countries in order systematically to acquire information regarding a possible theatre of war. He laid special stress on the German methods with which he had had opportunities of becoming conversant at a time when our relations with Germany were friendly. He then detailed the various cases of alleged espionage which had been reported to the General Staff during the past two years.

These cases of espionage included—

	1908.	1909. (3 months).
1. Cases of alleged reconnaissance	27	7
2. Individual Germans who have come under suspicion	16	15
3. Houses occupied by succession of Germans who have come under suspicion	4	2
	<u>47</u>	<u>24</u>

Colonel Edmonds laid great stress on the fact that none of these cases were reported by the police authorities, and that he was indebted for information regarding them to private individuals.

4. The Admiralty produced evidence to show that an attempt had recently been made by a foreign agent in Brussels to establish relations with someone in this country who could give information regarding naval gunnery. Sir E. Henry also informed the Sub-Committee of certain cases of espionage which had been investigated by the police.

5. A map was produced for the information of the Committee, in which were marked in red the various places from which reports of the presence of German agents had been received. From this map it was clear that the attention of these agents is being mainly confined to those portions of the United Kingdom which would be of special interest to Germany in the event of her having in contemplation the invasion of this country.

6. The evidence which was produced left no doubt in the minds of the Sub-Committee that an extensive system of German espionage exists in this country, and that we have no organisation for keeping touch with that espionage and for accurately

determining its extent or objectives. It is important that from the point of view of national defence we should obtain precise information on this subject so as to enable us to watch the movements of secret agents who are collecting information that would enable important demolitions and destruction to be carried out on or before the outbreak of war.

7. It was represented to the Sub-Committee that our organisation for acquiring information of what is taking place in foreign ports and dockyards is defective, and that this is particularly the case with regard to Germany, where it is difficult to obtain accurate information. The Admiralty and War Office also pointed out that they are in a difficult position when dealing with foreign spies who may have information to sell, since their dealings have to be direct and not through intermediaries. They are therefore compelled to exercise precautions in order to prevent the Government from becoming involved, which would be unnecessary if an intermediary who was not a Government official was employed in negotiations with foreigners.

The formation of a Secret Service Bureau.

8. The Sub-Committee consider that the best method both of acquiring information of what is being done by foreign agents in this country and of procuring information from abroad, would be obtained by means of a Secret Service Bureau, which should be separate from any of the Departments, but should at the same time be in close touch with the Admiralty, War Office, and Home Office.

9. The objects of this Bureau would be—

- (a.) To serve as a screen between the Admiralty and War Office and foreign spies who may have information that they wish to sell to the Government.
- (b.) To keep in touch through the Home Office, who would nominate an officer for the purpose, with the county and borough police, and, if necessary, to send agents to various parts of Great Britain with a view to ascertaining the nature and scope of the espionage that is being carried on by foreign agents.
- (c.) To serve as an intermediary between the Admiralty and War Office on the one hand, and the agents that we employ in foreign countries on the other.

By means of this Bureau our Naval and Military Attachés and Government officials would not only be freed from the necessity of dealing with spies, but direct evidence could not be obtained that we were having any dealings with them.

Conclusion :—

The detailed recommendations of the Sub-Committee regarding the establishing of the Secret Service Bureau are of so secret a nature that it is thought desirable that they should not be printed or circulated to the members. These recommendations have been considered by the Sub-Committee, and a single typed copy has therefore been made and handed over to the custody of the Director of Military Operations. The Sub-Committee consider that the organising of the Bureau should be entrusted to the Director of Military Operations in co-operation with the Admiralty and the Commissioner of Police, and that it should be undertaken without delay.

“ The Official Secrets Act, 1889.”

10. The Sub-Committee have had the opinion of the Home Office with regard to the facilities at present conferred by law for dealing with espionage, and as to the need for any addition being made to those facilities. “ The Official Secrets Act, 1889,” is the code under which we derive our present powers, and it is the opinion of the Sub-Committee that great need exists for amending this Act in order to make it an efficient weapon in dealing with espionage.

11. Mr. McKenna drew the attention of the Sub-Committee to a case that had recently occurred of secret information being published in a daily paper regarding the construction of a battleship. In the present state of the law we are unable to prosecute the editor of this paper for publishing this information; and, even if we were to find out the person who gave the information to the paper, it would be undesirable to institute proceedings against him, since in doing so we should be compelled to

vouch for the truth of the information published. Mr. McKenna therefore considered it desirable that "The Official Secrets Act, 1889," should be amended in such a manner as to enable the Government to prosecute persons who knowingly publish secret information.

12. The Sub-Committee agree with Mr. McKenna as to the desirability of legislation being undertaken that will deal with cases of the kind that he has brought to their notice. They consider, however, that it is important that any amendments that are made to "The Official Secrets Act, 1889," should only apply to actual espionage, and should not contain clauses, the tendency of which would be to restrict the freedom of the press. They are strengthened in this opinion by the fate of a similar Bill introduced in 1908. This Bill contained clauses relating to the publication of certain documents and information which caused it to attract a good deal of anxious attention from the press, and which resulted in the Bill not being proceeded with.

13. The Home Office (C.I.D. Paper S-5) and Sir E. Henry (C.I.D. Paper S-7) have suggested amendments to "The Official Secrets Act, 1889," which would, if embodied in the Act, greatly add to the powers that we at present possess of dealing with espionage. The amendments proposed by Sir E. Henry involve the addition of two sections to the Act. They would, if embodied in the Act, not only facilitate the arrest of suspected persons, but would also give the powers to search, which are clearly desirable, but which are not afforded by the Act of 1889. The amendments proposed by Sir E. Henry would not, however, have their full value unless section 1 of the Act, which defines the offence of espionage, was also amended in the manner suggested by the Home Office.

Conclusion :—

The Sub-Committee therefore recommend that a Bill should be brought in at an early date to amend "The Official Secrets Act, 1889," in the manner suggested by the Home Office and Sir E. Henry. They are of opinion that such a Bill would excite less opposition if it were introduced by the Secretary of State for War than by the Home Office, and that this might be done on the plea of its being a measure of precaution of great importance to national defence. They consider that legislation having for its object the prevention of the publication of certain documents or information should also be undertaken, but that this subject should be dealt with in a separate Bill after negotiations with the representatives of the press have resulted in an agreement as to its provisions.

The assistance that can be given by the Post Office and Customs.

14. The Post Office (C.I.D. Paper S-6) gave the Sub-Committee their views regarding the means by which the postal authorities could assist in detecting suspected persons and in obtaining information regarding them. The Sub-Committee consider that any fresh legislation with the object of giving more power to the Post Office with regard to opening or detaining letters is undesirable, and would be calculated to shake the confidence that the public at present place in that Department. They are, however, of opinion that a close touch should be kept between the Admiralty and War Office and the Post Office regarding espionage, and that communication between the Departments on this subject should not be carried out through ordinary official channels. They therefore recommend that the duty of corresponding with the Admiralty, the War Office, and later on with the Secret Service Bureau should be assigned to a particular member of the staff of the Post Office, with whom correspondence will be carried on direct.

Conclusion :—

The Sub-Committee do not think it necessary to make any suggestions with a view to establishing closer relations between the Admiralty and War Office and the Customs Department. They understand that the Admiralty already receive reports from the Customs, and consider that the Secret Service Bureau, when constituted, should also establish relations with that Department in a similar manner to that recommended in the case of the Post Office.

The Guarding of our Magazines and other Vulnerable Points.

15. In the course of the proceedings it was brought to the notice of the Sub-Committee by Sir E. Henry that he was of the opinion that some of our magazines

are inadequately guarded, and would not be secure against attack by two or three determined men made during the short time immediately preceding the declaration of hostilities. The Sub-Committee are of the opinion that it is desirable that an enquiry should be held into this matter. The object of this enquiry would be definitely to assign to the Admiralty, the War Office, or the Police, the responsibility for safeguarding not only our magazines, but also any dockyards, large oil-stores, cable landing stations, wireless stations, private shipbuilding yards, railway bridges, tunnels, and other vulnerable points the damaging of which, previous to hostilities breaking out, would be of advantage to an enemy.

Conclusion :—

The Sub-Committee recommend that such an enquiry should be undertaken by the Home Ports Defence Committee, and that Sir E. Henry should sit temporarily as a member of that Committee.

Summary of Conclusions and Recommendations.

- (a.) That a Secret Service Bureau should be formed to deal with espionage, and to act as a screen between foreign spies and Government officials.
- (b.) That "The Official Secrets Act, 1889," should be amended as suggested by the Home Office (C.I.D. Paper S-5) and Sir E. Henry (C.I.D. Paper S-7).
- (c.) That a Bill for the control of the press should be proceeded with, having for its object the prevention of the publication of certain documents or information.
- (d.) That communications on the subject of secret service between the Admiralty, War Office, and Secret Service Bureau, on the one hand, and the Post Office and Customs on the other, should not be through the ordinary official channels, but through particular members of the two latter Departments, with whom correspondence should be carried on direct.
- (e.) That an enquiry should be held by the Home Ports Defence Committee into the manner in which our magazines, dockyards, large oil-stores, cable landing stations, wireless stations, private shipbuilding yards, railway bridges, tunnels, and other vulnerable points are guarded, with a view to definitely assigning the responsibility for safeguarding these localities to the Admiralty, the War Office, or the Police.

R. B. HALDANE (*Chairman*).
 REGINALD McKENNA.
 H. J. GLADSTONE.
 SYDNEY BUXTON.
 ESHER.
 CHARLES HARDINGE.
 G. H. MURRAY.
 A. E. BETHELL.
 J. S. EWART.
 A. J. MURRAY.
 E. R. HENRY.

C. L. OTTLEY (*Secretary*).

2, Whitehall Gardens,
 July 24, 1909.

PROCEEDINGS
OF A
SUB-COMMITTEE OF THE COMMITTEE OF IMPERIAL
DEFENCE
APPOINTED BY THE PRIME MINISTER
TO CONSIDER
THE QUESTION OF FOREIGN ESPIONAGE
IN THE UNITED KINGDOM.

First Meeting, Tuesday, 30th March, 1909.

PRESENT :

The Right Hon. R. B. HALDANE, M.P., Secretary of State for War (*in the Chair*).

The Right Hon. R. McKENNA, M.P., First Lord of the Admiralty.

The Right Hon. H. J. GLADSTONE, M.P., Secretary of State for Home Affairs.

The Right Hon. S. BUXTON, M.P., Postmaster-General.

The VISCOUNT ESHER, G.C.B., G.C.V.O.

The Right Hon. SIR C. HARDINGE, G.C.M.G., G.C.V.O., Permanent Under-Secretary of State for Foreign Affairs.

SIR G. H. MURRAY, G.C.B., Permanent Secretary to the Treasury.

Rear-Admiral the Hon. A. E. BETHELL, C.M.G., Director of Naval Intelligence.

Major-General J. S. EWART, C.B., Director of Military Operations.

Brigadier-General A. J. MURRAY, C.V.O., C.B., D.S.O., Director of Military Training.

SIR E. R. HENRY, K.C.V.O., C.S.I., Commissioner of Police.

Rear-Admiral SIR C. L. OTTLEY, K.C.M.G., M.V.O. (*Secretary*).

Colonel J. E. EDMONDS, of the General Staff, and Captain R. C. TEMPLE, of the Naval Intelligence Department, *also attended the Meeting*.

Mr. HALDANE suggested that the best course for the Committee to adopt would be to get representatives of the Admiralty and the War Office to give them such evidence as they may possess that there is an extensive system of foreign espionage in

this country. On behalf of the War Office, he would ask Colonel J. E. Edmonds also to inform the Committee of the steps that a country contemplating war would be likely to take in order to acquire information regarding a prospective theatre of operations.

Evidence of Colonel J. E. EDMONDS.

Colonel J. E. EDMONDS explained that he was in charge of the section of the General Staff employed under the Director of Military Operations on secret service. He had studied the German army for practically the whole of his life, commencing from the time when he was in France during the German occupation. In 1891, when we were in the habit of exchanging information with regard to Russia with the German General Staff, he was able to acquire an insight into the methods that that staff adopts. On returning from a journey in Russia, made on behalf of the Intelligence Division, he was ordered to report personally at the Ministry of War in Berlin, and so got into touch with certain officers, including Major von X., who subsequently divulged that he was head of the Secret Service section.*

This officer stated that the section had two branches, one of which conducted investigation in France and the other in Germany. Colonel Edmonds maintained friendship with Major von X., meeting him occasionally until 1900, when this officer was removed from his post on account of his pro-English proclivities and replaced by Major Brose, a man of anti-English views.

Shortly after this Colonel Edmonds heard from several informants that a third branch of the Secret Service to deal with England had been formed. This information has often been confirmed, notably by information obtained by Colonel O'Sullivan, R.E., whilst the international contingents were together in Peking; by information obtained from French officers connected with the Secret Service; and by a French Secret Service agent named Lajoux, formerly employed in Brussels, where he was not only in the pay but also in the confidence of the branch agent of the German Secret Service established there. A Report has also been received from Mr. Haag, Vice-Consul at Bremerhaven, who particularly drew attention to the fact that England was divided up into districts for the purpose of collecting information.

The German system in peace time is organized—

1. In order to collect information with which to supplement maps and compile gazetteers and military reports; to obtain information as to the characteristics of senior officers; and, in fact, to acquire data of every kind with regard to the topography and resources of the country and the organization of its forces.
2. To arrange for the purchase of secret information.
3. For training guides.
4. For the reconnaissance of docks, bridges, telegraph lines, magazines, railways, which it is intended that attempts shall be made to damage on or before the outbreak of war.

For this purpose the country under observation is divided into districts, each under an officer on secret mission, or unattached, who has a number of agents under him.

These agents are divided into—

- (a.) Stationary agents, *i.e.*, persons settled in the country for business or other purposes.
- (b.) Mobile agents, either specially employed or persons whose business is itinerant.

In addition to these, any one who is capable of helping is expected to assist with information.

The following classes also supply information direct to headquarters:—

- (a.) Diplomatic and Consular officials (*e.g.*, Count Victor Eulenburg, who was caught in a dinghy at the Clacton manœuvres).
- (b.) Officers and officials who make official visits with permission.
- (c.) Officers and scientists on secret mission.

* Nachrichtenbureau, in the Herwarthstrasse.

It has been definitely ascertained that the centres from which the espionage system against France is directed are Brussels and Geneva. At present such evidence as is available seems to indicate that the system against England is also directed from Brussels. In one case, however, it is known that communications were sent from England to a German agent in New York.

In time of war, the duties of the agents resident in the country become of special importance, as follows :—

- (a.) Some are intended to remain in the country as spies in the midst of the forces or in rear of the army, using the telegraph to communicate with agents in neutral countries. Thus in 1870 there was a German collecting agent at Lyons who forwarded all despatches to Geneva, whence they were telegraphed to Germany.
- (b.) Some have special tasks allotted to them, *e.g.*, demolitions, after which they join their own forces.
- (c.) Others travel to the frontier, and are distributed to the army as guides.

Espionage is openly recognized in the German army as an essential and honourable weapon of war. Frederick the Great, in his "Instructions" to his Generals, wrote: "When Marshal Soubise goes to war he is followed by 100 cooks; when I go to war I am preceded by 100 spies." This maxim has sunk deep into the hearts of the successors of Frederick's Generals. In the "Field Service Regulations" up to 1896 all detachments were ordered to complete their system of intelligence by the use of spies. In subsequent editions these orders were given less openly, the expression "all suitable means" being substituted for "use of spies."

The French stories of the manner in which France was overrun by spies in the three years previous to 1870 are confirmed by German writers, notably by Prince Kraft of Hohenlohe-Ingelfingen in his Memoirs. He states that he used to notice the absence of officers of the General Staff, and on inquiry was always informed that they were on pleasure trips to France. This, he said, was very remarkable, as few of them had private means to enable them to travel abroad. No one was, however, deceived as to the purpose of their absence.

It is interesting to note that the French, prior to 1870, had no system of secret service, no money could be obtained for the purpose, but two days after the outbreak of war the Minister of War telegraphed to General Frossard: "Organize a system of espionage: you will be the eyes of the army."

The following day he allotted him a credit of 1,000,000 fr., and told Frossard to spare no money in order to get reliable information. As Colonel Rollin, one of the officers employed on intelligence, has recorded, "It was too late. Such a service cannot be improvised—it must be built up in the leisure of peace time."

The French have now a very good secret service, but it is mainly preventive, that is, it is designed to checkmate German efforts to get information. The German system is aggressive.

A number of suspicious cases have been reported to and investigated by the War Office during the last few years (see C.I.D. Paper, S. 1). These cases point to the fact that there is an extensive German system for collecting information in this country. The places from which the cases are reported have been marked on a map, and it is interesting to note that they are mainly concentrated in a zone which extends in the south-east of England—from the Wash round to the Isle of Wight. We have, however, no regular system or organization to detect and report suspicious cases, and are entirely dependent on casual information. No case has ever been reported to the War Office by the police, although they have assisted us to investigate cases. No case has been reported to us by the Post Office. Civilians are curiously apathetic in the matter. Hotel and boarding-house proprietors generally resent inquiries. One proprietress at Wells, in whose house Germans had been staying, refused information, saying that German money was just as good as any other.

The use of motors has facilitated espionage, as it enables agents to live at a distance from the scene of their operations, where their presence excites no suspicion.

German instructions for peace reconnaissances, a copy of which was obtained from a French source, lay down in the first paragraph that "The agent should be on the ground before daybreak so as to be able to commence work as soon as it was light in summer. This will always secure several hours of uninterrupted work."

In the absence of a system of contre-espionage the list of authenticated cases must naturally be imperfect, and cannot give a true impression of the work that is

undoubtedly being done. There is no direct evidence that the Germans intend to carry out demolitions in this country, and one can only assume their intentions—

- (a.) From articles which have appeared in the German press calling attention to the necessity for protecting German docks and railways from such outrages. For instance, the following appeared in the "Militär-Wochenblatt," 1909, signed by Major Fritsch, Instructor at the Staff College:—

"In spite of The Hague Conference, the surprise outbreak of hostilities without previous declaration of war will have to be reckoned with in the future even more than it has been in the past. Unless symptoms are misleading, the signal for breaking off diplomatic relations and the simultaneous commencement of open hostilities will in future be surprise landings, attacks of harbours, the blocking of a river entrance or a ship canal by ships laden with cement, the demolition of great bridges and tunnels on important railway lines, and acts of a similar nature.

* * * * *

"One single complete success in this direction *before* war would at once accomplish the disturbance of the deployment planned for the enemy's army and affect the line of communications of the enemy's fleet or army for the whole duration of the war."

- (b.) By inference from the procedure of the Japanese, who learnt the art of war from the Germans, in Manchuria. Attempts were made to blow up bridges, telegraph lines were cut, rails disturbed, and army stores set on fire. Recently "La France Militaire" reported the case of a German who had bought property immediately over a tunnel of importance as regards the mobilization of the army.
- (c.) From cases such as Nos. 10 and 12 (C.I.D. Paper, S. 1), which indicate that attention is being paid to certain railway bridges in this country.

In reply to a question by Lord Esher, Colonel Edmonds stated that British military officers do not carry out reconnaissances of the German coast unless they are specially detailed and their expenses guaranteed. It is practically impossible to obtain information, owing to the way in which strangers in Germany are watched and liable to arrest if their movements or actions are suspicious. The Act to forbid the collection of military information is wide and drastic.† It is immaterial that the information collected is not secret in Germany. Thus one may be arrested for counting the number of spans in a bridge or pacing the width of a road.

The following extract from the "Kiel Gazette" indicates the vigilance that is displayed to guard against the collection of information by foreigners:—

"All the Customs officials (higher Customs Controllers, Customs Assistants, Customs Overseers), who are entrusted with watching the frontier of the Province of Schleswig-Holstein, have been appointed assistants to the local police for the purpose of guarding the coast regions of Germany against spies. It is the business and duty of these officials to arrest temporarily and conduct at once to the nearest police or military authority any person who, by taking photographs, taking measurements, &c., as well as by unusual enquiries, bring themselves under suspicion."

It must be added that universal naval and military service, the numerous patriotic societies and veterans' clubs have converted the whole male population into an intelligent and watchful auxiliary of the police.

Lord ESHER asked if Colonel Edmonds felt any apprehensions regarding the large number of German waiters in this country.

* No deductions can be drawn from the war of 1870-1, as at that epoch no high explosives like guncotton or dynamite were available, and service demolitions were carried out with gunpowder. Of this a considerable quantity is required to effect real damage, and it is practically useless unless it is tamped (covered with earth or other substance so as to make the line of least resistance in the direction of the material it is desired to destroy). Sufficient guncotton to cut the girder of a bridge, with means of ignition, can be carried on the person. Gunpowder and tamping for the same purpose would require a cart and horse and a working party.

† The "Strafgesetzbuch" was produced by Colonel Edmonds.

Colonel EDMONDS did not think that we need have any apprehensions regarding the majority of these waiters, or suspect them of being in any way organized for offensive action. He thought that men who were to carry out demolitions would probably be sent over in time of strained relations, and were not likely to be resident in the country.

Mr. BUXTON asked to what extent the French were able to protect themselves against espionage.

Colonel EDMONDS stated that they succeeded in capturing a good many foreign agents. One of the most recent of these was Lieutenant Ullmo. On one occasion they captured one of our agents at Toulon. The Germans, as a rule, conduct their operations in France by means of correspondents who are not Germans. He added that he had received a hint from a regular correspondent in Germany that, owing to the attention which had been given to German espionage in the British press, the activity of German agents in England would be decreased for a couple of years in order to lull suspicion.

Evidence of Captain R. C. TEMPLE.

Captain R. C. TEMPLE stated that there was no machinery at the Admiralty for carrying out investigations into espionage. He was in the habit of reporting suspicious cases to Colonel Edmonds who had greater facilities for inquiring into them. One case, in particular, had been followed up by the Admiralty, the details of which were as follows :—

In 1908 a series of advertisements appeared in the "Daily Mail," of which the following, taken from the "Daily Mail" of the 20th November, 1908, is a typical example :—

"Officers (retired), engineers, clerks, wishing to increase their income by contributing articles to first-class American naval review, should apply to B. B., 126, c/o Office de Publicité, Brussels."

An answer to this advertisement brought the following reply :—

"Dear Sir,

"In answer to your letter of the 13th June, 1908, referring to our advertisement in the 'Daily Mail,' I beg to inform you that we are in want of correspondents who are able to give information concerning all kinds of important and secret cases respecting the navy.

"The name of the paper is immaterial, as we are contributors to many periodicals.

"For good and valuable information we give specially high remunerations; also of course we treat everything confidential.

"Please write to our European correspondent :

"CH. TRIANOUD,

"Bruxelles, poste restante."

With the object of eliciting more information, a reply was sent to this letter, and brought a second letter from M. Ch. Trianoud, which, in addition to giving assurances of acting in good faith, contained the following interesting passage :—

"Just now I read in the 'Evening News' of the 26th instant a notice about a missing Gunnery Report at Portsmouth. Do you know anything about it, or are you able to provide it? If you are, let me know by return. I would pay about 50*l.* for it."

A continuance of the correspondence and investigations carried out independently brought to light the following facts :—

1. No one of the name of Ch. Trianoud exists in Brussels.
2. The letters addressed to that name were called for by different individuals, showing that Brussels is at least the head-quarters of a forwarding agency.

3. The so-called Ch. Trianoud gave an interview at Cologne to an agent who was to act for him in England.

4. The instructions given to this agent and the list of points on which information was required are in our possession.

5. This list shows that it must have been drawn up by an individual who had a thorough knowledge of gunnery and a good acquaintance with the various Reports and Returns issued by the Admiralty.

6. The agent was given addresses in Basle and Ostend (in our possession) to which his Reports were to be forwarded.

There is no direct evidence to connect Ch. Trianoud with the German Government.

Sir E. HENRY said that in 1904 he sent down an officer to Portsmouth to investigate certain suspicious cases of espionage. This officer reported as follows:—

“At *Plymouth* a foreigner named Boyen, who is believed to have worked in German and Russian dockyards, and is well educated, was employed in the Devonport yard, and has since been dismissed for keeping a tool shop outside. No particular suspicion attaches to this man.

“At *Weymouth* a foreign-looking man was seen with a camera in a position to take the rear side of Nothe Fort. This man said he was a missionary from East Africa. There appears to be such a missionary, and the only point in the case worth considering is that the gunners in Nothe Fort seem to have no orders to prevent photographs being taken.

“At *Milford Haven* a man named Roccabruna, who described himself as a teacher of Italian, was clearly engaged in collecting information in regard to defences, or in connection with the naval manœuvres. This man was arrested for making too pointed inquiries about Angle Fort under construction, but he was released for want of any specific evidence.

“At *Sheerness* there is a very suspicious German photographer named Losel, who spends a good deal of money and does little or no business. He is, however, known to be a doubtful person, and his opportunities are, therefore, not great. A German carrying a camera had resided for a few days at the post-office at Grain Island, which is a marsh and could be of interest to no one, except inasmuch as it contains several important naval magazines.

“At *Harwich* nothing was discovered.

“At *Portsmouth* it appeared that German officers are being regularly received at Wymering Rectory, about $3\frac{1}{2}$ miles from the town. Each stays for a short time, and is succeeded by another. One of them was an aide-de-camp of Prince Henry of Prussia. This has been going on for at least two years, and there is reason to suppose that each officer studies some particular matter in connection with the defences. A local watchmaker, long suspected, was visited by one of these officers, and one had a meeting with a local photographer, also a suspect.

“Similar proceedings seem to occur at Swanmore Vicarage and at Shanklin or Ventnor, in the Isle of Wight. At Chichester Lady or Miss Gordon-Lennox receives German officers as paying guests, and is reported to be aware of the objects they have in view.”

The impression on the mind of the police was that there had been foreign officers making themselves acquainted with certain localities and spying generally. They went about a good deal at night, and might have been contemplating designs against our magazines.

There was another case of a man named Alleyne. He worked at Portsmouth, but came up to London and went to an hotel. Soon after his arrival he broke his leg and was taken to hospital. He had been suspected of espionage, so the police took advantage of his absence to search his baggage. Numerous details regarding shells and explosives were found in his possession. These were sent to an expert, who said that they were of no value to any foreign Government.

Mr. HALDANE considered that the evidence heard by the Committee had made it

quite clear that a great deal of reconnaissance work is being conducted by Germans in this country. Probably, too, though it is difficult to obtain precise information on this subject, secret agents are collecting information that would enable important demolitions and destruction to be carried out in this country on or before the outbreak of war.

Lord Esher suggested that the cases of espionage that had come under the notice of the Admiralty, the War Office and the Police, should be tabulated and circulated to the members of the Committee.

Mr. Gladstone thought it desirable that we should communicate confidentially with the Chief Constables of the five counties of Norfolk, Suffolk, Essex, Kent, and Sussex, with a view to ascertaining whether they had come across any suspicious cases in their districts.

Mr. Haldane concurred in these suggestions. He considered that it would be an advantage to the Committee to have information from the Post Office with regard to their power of dealing with the correspondence of foreigners or other persons suspected of espionage. The Committee would also be glad of information from the Home Office on the Common Law powers of dealing with such persons. He suggested that Memoranda should be prepared on these subjects by the Departments concerned.

Second Meeting, Tuesday, 20th April, 1909.

PRESENT :

- The Right Hon. R. B. HALDANE, M.P., Secretary of State for War (*in the Chair*).
 The Right Hon. R. McKENNA, M.P., First Lord of the Admiralty.
 The Right Hon. H. J. GLADSTONE, M.P., Secretary of State for Home Affairs.
 The Right Hon. S. BUXTON, M.P., Postmaster-General.
 The Viscount ESHER, K.C.B., G.C.V.O.
 The Right Hon. SIR C. HARDINGE, G.C.M.G., G.C.V.O., Permanent Under-Secretary of State for Foreign Affairs.
 SIR G. H. MURRAY, G.C.B., Permanent Secretary to the Treasury.
 Rear-Admiral the Hon. A. E. BETHELL, C.M.G., Director of Naval Intelligence.
 Major-General J. S. EWART, C.B., Director of Military Operations.
 Brigadier-General A. J. MURRAY, C.V.O., C.B., D.S.O., Director of Military Training.
 SIR E. R. HENRY, K.C.V.O., C.S.I., Commissioner of Police.
 Rear-Admiral SIR C. L. OTTLEY, K.C.M.G., M.V.O. (*Secretary*).
 SIR H. BABINGTON SMITH, Secretary to the Post Office, and Colonel J. E. EDMONDS, of the General Staff, *also attended the Meeting*.

MR. HALDANE stated that he had just returned from a visit to Germany. His impression was that the German Government was not deliberately collecting information regarding this country with the definite intention of invading it. There was little doubt, however, that the German General Staff is collecting information systematically in Great Britain with a view to knowing as much as possible about a conceivable theatre of war. We can do nothing to prevent this; but what we might do was to prevent them in time of war or strained relations from availing themselves of the information that they had collected, by injuring our defences, stores, or internal communications.

Some years ago we were considering, in the Defence Committee, a Bill dealing with the control of press in time of war. A Bill was then drafted, but did not satisfy the press representatives who were consulted in the matter. At the present time public opinion was much more sympathetic towards a Bill of the nature proposed, and this attitude of the public should be taken advantage of. He suggested that the Committee should have a copy of the Bill circulated for their consideration.

The question for the Committee to decide was how we could best obtain information as to what the Germans were doing in this country. We might perhaps be able to make use of the Post Office to get us information. Possibly our Territorial Force organization could also be used for the purpose, and also the police. The Official Secrets Act gives us some powers, but these may require amendment, since what we probably require is some power of taking swift action in time of strained relations against suspected persons.

SIR EDWARD HENRY represented that to render the police an effective agency for this work it would be necessary to improve the procedure provided by the Official Secrets Act, as the common law gives no real help. Under the Official Secrets Act the police must first apply for the sanction of the Attorney-General, and having

secured it, must go to the Courts and apply for process. The power of search for incriminating papers is absolutely essential, but it would appear that the Courts have no power to issue a search warrant under the Act, though they have this power in even petty larceny cases. He added that he was of the opinion that some of our magazines are inadequately guarded, and would not be secure against damage from a determined attempt by two or three men made during the short time immediately preceding the declaration of hostilities. In his view, it is desirable to have this matter looked into and reported on by a small Committee of experts. He suggested that it might be possible for the Post Office to have the envelopes containing letters from suspects photographed, even if they could not be opened. If they could not be photographed, might it not be possible to take a tracing of the handwriting?

SIR H. BABINGTON SMITH explained that the objection to photographing or tracing the handwriting on letters was the delay that it would necessarily cause in the delivery of the letters. Such delay would be illegal unless authorized by a Secretary of State's warrant. He explained the procedure that would have to be adopted in order to stop a letter from being delivered, and showed how such procedure would involve several persons in subordinate positions being aware of what was going on. The actual photographing or tracing were not illegal.

MR. BUXTON said that the opening of letters in time of peace would be much against public opinion, and it was very undesirable to shake public confidence in the security of the post. It was quite legal and feasible for the Post Office to give information that a certain person is receiving letters from abroad.

GENERAL EWART explained the system adopted by other nations with regard to the correspondence of the Military Attachés with Secret Service Agents. He showed that such correspondence was not carried on direct, but through some intermediary. The General Staff were thus protected against being detected in any dealings with spies. We have no machinrey of this kind, but it could no doubt be organized. We require information regarding espionage in this country so that we may keep suspicious aliens under observation, and be able to lay our hands on them in time of need. We also want to be in touch with foreigners with a view to ascertaining if there are any stores of foreign arms or explosives in the country. He read to the Committee some extracts from a paper which had been prepared by Colonel Edmonds showing how stringent the regulation had been for dealing with foreigners domiciled in Great Britain during the Napoleonic wars. He finally asked whether a small secret service bureau could not be established which might be in touch with the various Departments.

SIR GEORGE MURRAY thought that something of the nature suggested by General Ewart could be done.

MR. HALDANE said that it would be best if Sir George Murray, Sir Charles Hardinge, Admiral Bethell, General Ewart, and Sir E. Henry would meet and consider the question of how a secret service bureau could be established. The Committee would be glad to have before them at the next meeting a Memorandum from the Home Office giving their opinion as to the manner in which the Official Secrets Act can be amended so as best to deal with the circumstances that we are considering. They would also like the opinion of the Post Office and the Police as to the extent to which they can assist in giving systematic information about the correspondence of foreigners suspected of being engaged in espionage in the United Kingdom, and in reporting such cases. The Committee would also like to have circulated—

- (1.) The amendments that were suggested in 1907 and 1908 to the Official Secrets Act.
- (2.) The Bill for the control of press that was considered by the Committee of Imperial Defence.
- (3.) Memorandum by Sir C. P. Ilbert on emergency powers, dated the 5th August, 1896.

Third Meeting, Monday, 12th July, 1909.

PRESENT :

- The Right Hon. R. B. HALDANE, M.P., Secretary of State for War (*in the Chair*).
 The Right Hon. R. McKENNA, M.P., First Lord of the Admiralty.
 The Right Hon. H. J. GLADSTONE, M.P., Secretary of State for Home Affairs.
 The Right Hon. S. BUXTON, M.P., Postmaster-General.
 The Viscount ESHER, G.C.B., G.C.V.O.
 The Right Hon. SIR C. HARDINGE, G.C.M.G., G.C.V.O., Permanent Under-Secretary of State for Foreign Affairs.
 SIR G. H. MURRAY, G.C.B., Permanent Secretary to the Treasury.
 Rear-Admiral the Hon. A. E. BETHELL, C.M.G., Director of Naval Intelligence.
 Major-General J. S. EWART, C.B., Director of Military Operations.
 Brigadier-General A. J. MURRAY, C.V.O., C.B., D.S.O., Director of Military Training.
 SIR E. R. HENRY, K.C.V.O., C.S.I., Commissioner of Police.
 Rear-Admiral SIR C. L. OTTLEY, K.C.M.G., M.V.O. (*Secretary*).
 SIR H. BABINGTON SMITH, Secretary to the Post Office, *also attended the Meeting*.

MR. HALDANE suggested that the Committee had now had sufficient evidence before them to enable them to issue a report. He did not think that there was any doubt that a great deal of German espionage was being undertaken in Great Britain, with a view to making a detailed study of our resources and of the topography of the country. During the past week the War Office had received a document from abroad which threw some light on what was going on. This document had been obtained from a French commercial traveller, who was proceeding from Hamburg to Spa. He travelled in the same compartment as a German whose travelling-bag was similar to his own. The German, on leaving the train, took the wrong bag, and on finding out this the commercial traveller opened the bag left behind, and found that it contained detailed plans connected with a scheme for the invasion of England. He copied out as much of these plans as he was able during the short time that elapsed before he was asked to give up the bag, concerning the loss of which the real owner had telegraphed to the railway authorities where the train next halted. Mr. Haldane himself had been inclined to regard the plans as not being genuine, and as being possibly concocted by the French Government in order to wake us up and draw attention to our military needs. General Ewart and General Murray were, however, confident that the plans were not the work of amateurs, but showed great knowledge of the vulnerable points in this country, and revealed the fact that, as we had already suspected, there were certain places in this country where German agents are stationed, whose duty it would be to take certain action on the outbreak of war, or during the time of strained relations preceding that outbreak. Mr. Haldane recently had an interview with a member of the Russian Government. The latter spoke of the defensive preparations that were being adopted, both by Russia and France, against Germany, and pointed out how tempting to Germany were the inducements offered by the possibility of successfully invading England.

Since the last meeting certain members of the Sub-Committee had met and considered the question of how a Secret Service Bureau could be established to deal

both with espionage in this country and with our own foreign agents abroad, and to serve as a screen between the Admiralty and the War Office on the one hand, and those employed on secret service, or who have information that they wish to sell to the British Government, on the other. The report on this subject would be read to the Sub-Committee.

Memoranda had been circulated to the members by the Home Office and by Sir E. Henry suggesting amendments to "The Official Secrets Act, 1889." The Secretary to the Post Office had also informed them as to the manner in which they could assist in obtaining information regarding foreigners suspected of being engaged in espionage in the United Kingdom.

SIR CHARLES OTTLEY read to the Sub-Committee the report signed by Sir Charles Hardinge, Sir George Murray, Sir Edward Henry, Major-General Ewart, and Rear-Admiral Bethell suggesting the manner in which a Secret Service Bureau could be established, and giving an estimate of the cost of this bureau. In order to ensure secrecy, this report had not been printed, and only one copy was in existence.

The Sub-Committee recommended that the report be accepted.

MR. HALDANE suggested that the next point to be considered was the manner in which it was advisable to amend "The Official Secrets Act, 1889." The Home Office in their Memorandum had proposed rather wide amendments. Those proposed by Sir E. Henry were shorter and involved the addition of two sections to the existing Act by means of which power would be given to the police of arresting suspected persons, and Justices of the Peace would be enabled to issue search warrants. Sir E. Henry's amendments would not, however, have their full value unless section 1 of the Act, which defines the offence of espionage, were also amended in the manner suggested by the Home Office. He did not anticipate that there would be any difficulty in getting the amendments proposed through the House of Commons, and agreed with Mr. Gladstone, who suggested that if the new Bill was to be confined to these amendments it might suitably be introduced by himself (Mr. Haldane) as a military measure necessary for the purpose of national defence.

LORD ESHER drew attention to the Bill amending the Official Secrets Act which was introduced in 1908 and had not been proceeded with. He pointed out that exception to the Bill had only been taken by a few newspapers, and considered that it might be possible to come to an agreement upon the basis of that Bill with the leading proprietors of newspapers, who are few in number.

MR. McKENNA pointed out that the "Daily Mail" had recently published details regarding one of our battleships which the Admiralty desired to keep secret. We ought to be in a position to prosecute the proprietor of the paper for doing this. We are, however, quite powerless in the matter, as the Official Secrets Act does not provide us with any machinery for instituting such a prosecution. If we knew the person who had communicated the information to the paper we could prosecute that person under the Act, but in order to prove him guilty it would be necessary to vouch for the truth of the information that he had caused to be published. The actual publisher of the newspaper could not be touched.

MR. HALDANE considered that the question raised by Mr. McKenna was a most important one, and that it must not be lost sight of by the Sub-Committee when they made their recommendations.

MR. BUXTON, in reply to a question by Mr. Haldane, said that he would arrange that a member of the Post Office should be put in touch with the Admiralty and War Office, who would form the regular medium of communication between the Departments.

MR. HALDANE reminded the Sub-Committee of the statement made at the last meeting by Sir E. Henry, to the effect that, in his opinion, some of our magazines were inadequately guarded, and would not be secure against damage from a determined attempt by two or three men made during the short time immediately preceding hostilities. He himself was of opinion that it was desirable to refer the question of the guarding, not only of our magazines, but also of our dockyards, large oil stores,

cable landing stations, wireless stations, private shipbuilding yards, railway bridges, and other vulnerable points, to a Committee of Inquiry, with a view to definitely assigning the responsibility for safeguarding these localities to the Admiralty, the War Office, or the Police. He suggested that the new Home Ports Defence Committee might suitably conduct this enquiry, and that Sir E. Henry should sit temporarily as a member of the Committee.

MR. BUXTON agreed that it was most desirable to arrange that our wireless stations and cable landing places should be efficiently guarded, and that he would be glad to put all the information that they required at the disposal of the Committee.

MR. HALDANE called attention to the fact that no suggestion had been made by the Sub-Committee with regard to bringing the Customs authorities into closer relations with the Admiralty and the War Office. He understood, however, that the Admiralty were already in touch with the Customs, and thought, therefore, that it was only necessary for the Sub-Committee to recommend in their report that relations should be established between the proposed Secret Service Bureau and the Customs authorities.

[CONCLUSION.]

APPENDIX I.

CASES OF ALLEGED GERMAN ESPIONAGE WHICH HAVE BEEN REPORTED TO THE DIRECTOR OF MILITARY OPERATIONS.

THE following is a summary of the cases of alleged German espionage reported to the Director of Military Operations, which on inquiry appeared to offer some justification for suspicion. No catalogue of such cases was kept until the end of 1907, as very few were reported; it is only since certain newspapers have directed attention to the subject that many cases have come to notice :—

	1907.	1908.	1909 (3 months).
1.—Cases of alleged reconnaissance	3	27	7
2.—Individual Germans who have come under suspicion	2	16	15
3.—Houses occupied by a succession of Germans who have come under suspicion	4	2
Total	5	47	24

A Table giving details of some of the cases is attached.

It must be borne in mind that no machinery at present exists for detecting or reporting espionage; not a single case included in the above summary was reported to the War Office by the police; the military authorities are entirely dependent for information on the subject on the enterprise of individual members of the public, and as the public has little knowledge of military matters, it fails, as a rule, to notice the significance of the acts and inquiries of foreign visitors.

When a case is reported to the military authorities they have no means of investigating it, nor authority to shadow suspected persons or watch their residences. All that can be done is to make a few inquiries so as to test the *bona fides* of the informant.

The German instructions for peace reconnaissances in foreign countries very properly lay down that the persons intrusted with their execution must be on the ground, ready to commence, at daybreak, when they are certain to secure several hours of freedom from interruption; thus, as no watch is kept, many of the reconnoitrers, if they exist, may have escaped notice. In only one case near Portsmouth were two Germans actually caught at work in the early morning.

The map shows that most cases have been reported in a particular zone, but, as there is no system of detection, it is possible that persons may have been employed to exhibit themselves at work openly so as to distract attention from the real agents and from the localities in which genuine interest is taken.

Neither the figures given above nor the cases which follow should be taken in any way to represent what is really being done. They only indicate what has been detected by accident and reported by the good-will of individuals.

General Staff,
War Office, April 13, 1909.

I.—CASES OF ALLEGED RECONNAISSANCE WORK BY GERMANS WHICH HAVE BEEN REPORTED TO THE DIRECTOR OF MILITARY OPERATIONS.

Date and Informant.*

24th March, 1908.
Member of staff of
newspaper (Terri-
torial officer).

(1.) On many occasions in 1905 and 1906, particularly in the latter year, informant noticed individuals, unmistakably foreigners, going about the North Walsham Division (Sheringham to Yarmouth) studying maps and making notes. They were too absorbed and businesslike for ordinary tourists. Reports were made to him by several persons who noticed the same thing.

24th March, 1908.
Essex J.P.

(2.) Between the 3rd and 19th January, 1908, informant observed three, and sometimes four, persons riding about and noting the topography of the country near Brightlingsea. He made inquiries, which led him to believe they were Germans. The fourth person was a servant, a German, who said he had served in a British cavalry regiment.

24th March, 1908.
Member of staff of
newspaper (Terri-
torial officer).

(3.) During the last week of January and first week of February 1908 informant noticed three foreigners, whom he believed to be Germans, walking about in the neighbourhood of Wyvenhoe. They came by train on several occasions from the direction of Colchester. He particularly noticed that they examined the creek and the railway between Wyvenhoe and Brightlingsea.

16th May, 1908.
Kent land-owner.†

(4.) Informant found two Germans trespassing in his park near Canterbury; after some conversation he invited them in to dinner. They exhibited great knowledge of the topography of Kent, and especially of the water supply. One of them eventually admitted that they were engaged in correcting a map, of which he showed a tracing, and adding military detail to it. This tracing showed a water tank in the park which was unknown to the owner, and a water tower not shown on the 6-inch Ordnance Map. Part of a completed military map of Kent was shown to the informant in Berlin by one of the officers. The military details given by the informant, who is not a soldier, tend to corroborate his story.

28th May, 1908.
Manager S. E. and C.
Railway.

(5.) Herr C. Lamp, a German railway official, applied to the Company, backed by a recommendation of his Ambassador, to inspect certain railway junctions, particularly Hither Green, the new junction, which is the most important link between the railways entering London from the north and the south.

11th October, 1908.
Harbour-master,
Newhaven.

(6.) Informant reports that a German tug, the "Seeadler," is at Newhaven, and has been in and out several times. Refused lucrative job of towing when it was offered. Is reported to have been visiting other channel ports.

14th November, 1908.
Captain Upton
(Territorial force).

(7.) Captain Upton, in a public speech in Essex, which he adhered to when communicated with officially, stated that a German Major had said in his hearing that "his district" which he had to study extended from Brentwood to Chelmsford.

* It has not been considered desirable to print the names of the informants.

† The police authorities have doubts as to this man's credibility.

Date and Informant.

10th December, 1908
Lincolnshire J.P.

(8.) Informant, who was swimming some of his horses at Maplethorpe, Lincolnshire, observed a party of Germans, who left by train, taking measurements of the dykes with a cord.

10th December, 1908.
Lincolnshire J.P.

(9.) A foreigner, who gave the name of Colonel Gibson and said he was a retired officer, with a German woman and a boy, neither of whom could speak English, stayed at Sutton-on-Sea, Lincolnshire, for several months in the summer of 1908. He took much interest in the coast, and was known locally as the "German spy." [The two Colonel Gibsons in the "Army List," both retired, have been communicated with; neither was on the East Coast in 1908.]

2nd February, 1909.
Chemist and photographic expert.

(10.) In the summer of 1907 a party of three Germans staying in West Hartlepool brought negatives daily to the informant for development, giving him no opportunity of taking prints. The views photographed showed the coast at various states of the tide, the bridges and viaducts of the East Coast railway which runs close to the shore. The men were subsequently joined by another German, to whom they paid great deference. He had a valuable camera, worth about 50*l*. He paid special attention to a certain part of the coast where rocks made a landing difficult, and had additional views taken of parts previously photographed by the party. The views were not artistic. The informant's business is mainly photographic, and he does a good deal of developing for the young German and Swedish clerks who abound in West Hartlepool.

10th February, 1909.
A well-known author.

(11.) Informant, while motoring last summer in an unfrequented lane between Portsmouth and Chichester, nearly ran over a cyclist who was looking at a map and making notes. The man swore in German, and on informant getting out of his car to apologize, explained in fair English, in the course of conversation, that he was studying at Oxford for the Church, and swore in German to ease his conscience. He was obviously a foreigner. Informant's suspicions being aroused, he returned to the neighbourhood on several subsequent days, and found the cyclist and companions still engaged in exploring the tracks and lanes.

25th March, 1909.
Innkeeper.

(12.) In June 1908, two foreigners, stoutish, well-set-up men, of about 25 and 35 respectively, came on cycles to informant's inn at Reedham, Norfolk, which is nearly $\frac{3}{4}$ of a-mile from a main road at the end of a loop, with no road beyond it, but close alongside the swing railway bridge over the Yare River on the line connecting Lowestoft with Yarmouth and Norwich. The men had a map, on which one of them marked reference numbers, writing similar numbers and remarks in a note-book. The other man paid particular attention to the swing bridge. They asked a number of questions about the water in the Yare, the name of farm owners, which they noted down. There are three inns on the main road at the point where the turning to the railway bridge leaves it.

II.—GERMANS WHOSE CONDUCT HAS BEEN REPORTED AS GIVING RISE TO SUSPICION.

Date and Informant.	
13th January, 1908. Officer Commanding the Troops, Sheerness.	(13.) Lösel, photographer, has been in Sheerness some years. He has no assistant and is not zealous in his trade. He has travelled and is well-informed; has been under suspicion ever since his arrival. He goes to Germany once a-year.
24th January, 1908. General Staff, Aldershot.	(14.) The head waiter and most of the staff of the Queen's Hotel, Farnborough (North Aldershot, where three Generals and several officers of the garrison reside), are Germans. They have good opportunities of collecting information.
24th March, 1908. Member of staff of newspaper (Territorial officer).	(15.) Cobletz, a German, aged 40, who has served in the German army, lives at St. Alma, Wellesley Road, Clacton-on-Sea. He makes a point of being on friendly terms with every one; does a little shooting, but has no occupation. He receives remittances from abroad. He has lived at various places on the East Coast.
25th August, 1908. Colonel.	(16.) The head waiter at the Hotel Burlington, Dover, is suspected of being an officer; he has admitted that he is an n.c.o. of a fortress artillery regiment.
10th October, 1908. Commandant, S.M.E. Chatham.	(17.) Engineer clerk Q.M.S. Hurwitz, employed in the office of the Secretary, R.E. Institute, is of German birth. He writes regularly to his relatives in Prussia.
26th December, 1908. Territorial captain.	(18.) Certain photographs of the Portland defences, taken from inside, appeared in the German paper "Die Woche," which stated they were supplied by the International Publications Bureau. This bureau, on inquiry, was found to be a German named Sandmann, who resides at 44, Great Queen Street. He rents three rooms, but has no servant. He receives many communications by post. He never permits visitors to enter his workroom, using another room for their reception.
10th February, 1909. A well-known author.	(19.) The firm of Henri et Cie., barbers, Osborne Road, Southsea, is a German named Beck. He is a well-educated man, has been eleven years in England, but is not naturalized. He had until recently an assistant named Schweiger, another German, who was discovered by accident to wear a wig over his own thick head of hair. Schweiger is still living in Portsmouth. Both men consort with sick-bay stewards, officers' servants, and similar ratings, and take much interest in navy gossip.
10th February, 1909. A well-known author.	(20.) Simonds, photographer, of 39, High Street, Portsmouth, a Polish Jew, has long been under suspicion. A few years ago he was strongly suspected of being in communication with the French Naval Attaché.
14th March, 1909. A well-known author.	(21.) Max Piper, 54, Park Road, West Dulwich, a retired German Captain (who has, however, dropped his title), is employed as go-between to communicate with the German agents in his country. He gives out that he is

Date and Informant.

the representative of Wolff's Telegraph Bureau, and has done work for it. He is in frequent communication with the German Embassy. [From the records it appears that the man came under suspicion in 1906 and 1907.]

20th March, 1909.
Captain, R.N., per the
Naval Intelligence
Department.

(22.) Schneider, a German, keeps a barber's shop on The Hard, Portsmouth. He has recently formed it into a kind of club, which is much frequented by sub-lieutenants of submarines.

20th March, 1909.
London journalist.

(23.) Paul Brodtmann, a German, managing director of the Continental Tyre Company, London, an ex-officer, with A. Richter, accompanied the Guards' motor trip to Hastings. Brodtmann is in communication with the German Military Attaché, and furnished him with a report on the experiment.

2nd April, 1909.
Quarry owner.

(24.) A German, who represented himself to be Dr. Salfeld, geologist, of Göttingen University, came to Portland to study the Portland sand formation. Proved to be a novice, or very ignorant of geology. Bought fossils at an extravagant price, but did not take them away. Manifested more interest in places whence a good view of the defences could be obtained than in geology.

III.—HOUSES REPORTED TO BE OCCUPIED BY A SUCCESSION OF GERMANS WHICH IT IS DESIRABLE TO WATCH.

Date and Informant.

20th January, 1908.
Motor shop hand.

(25.) Germans of smart soldierly appearance are living in a house a little way out of Hythe, and have been there for about eighteen months for, so they give out, fishing and motoring. The same men only remain about two months, when their places are taken by others; in this way there have been about twenty at Hythe. They have a German woman, who does cooking and house-work for them. They do not often go into the town, but motor a good deal towards Lydd and frequent the neighbourhood of the ranges.

18th May, 1908.
Territorial captain.

(26.) Four Germans live in a small house near Epping. The men change every two or three months. They have no servant; a woman goes daily to clean the rooms. They have bicycles and photographic apparatus. They are occasionally visited by women from London for week ends. They are stated by the informant to have asked questions about supplies and transport.

27th August, 1908.
Civilian.

(27.) A series of German officers, who reconnoitre, sketch, and photograph, use a certain large boarding house at St. Lawrence, Ventnor, Isle of Wight. A conversation overheard indicates that they were specially chosen for this work.

16th November, 1908.
Staff Officer of Terri-
torial Division, and
others.

(28.) The Pines, a lonely house at Kelling, Norfolk, 2½ miles from the coast at Weybourne Hope, is rented by a Mr. Browne, who keeps a boarding house in London much frequented by German officers. His sister-in-

Date and Informant.

3rd February, 1909.
"Morning Post."

law is married to a German in Bremen. The house was occupied last summer by five German officers, and there was at least one there in the winter. Their presence was only discovered by the accident that one of them missed the last train at Fakenham (some miles down the line) and had to hire a trap to get home. The man in charge of the house is suspicious of visitors. The house is now guarded by a large mastiff. [It may be noted that W. M. A. writing to the "Daily Mail," on the 10th July, 1908, reported he had seen three Germans taking soundings, bearings, and photographs at Weybourne Hope, which is a perfect landing-place]

10th February, 1909.
A well-known author.

(29.) There is a German so-called Labour Colony ("Deutsche Arbeiter-Kolonie") at Libury Hall, near Ware, Herts. The avowed object of the colony is to care for and assist unemployed and destitute Germans. [There is information in the hands of the Directorate of Military Operations to the effect that a Society with similar object until recently existed in Paris. Its officials were detected in the attempt to suborn young French soldiers; inquiry showed the Society had branches in most of the great French fortresses, and had paid money to French soldiers. Some of the philanthropists were expelled from France.]

(30.) A series of Germans come and go at 173, Powerscourt Road, North End, Portsmouth. They receive many registered letters from Germany.

APPENDIX II.

POWERS OF THE POST OFFICE FOR DEALING WITH THE CORRESPONDENCE OF PERSONS SUSPECTED OF ESPIONAGE.

Note by the Secretary to the Post Office.

IT is illegal to open, detain, or delay any letter or other postal packet in course of transmission through the post, except in obedience to an express warrant in writing under the hand of a Secretary of State ("The Post Office Act, 1908," sec. 56).

If it is thought necessary to open and examine the correspondence of a person suspected of espionage, this can only be done under the authority of a warrant from a Secretary of State. Such warrants are occasionally issued by the Home Secretary in criminal cases. They are rarely issued by other Secretaries of State.

2. The execution of such a warrant is not difficult if it relates to correspondence addressed to a specified person at a specified address in this country. It is more difficult in the case of correspondence addressed to a specified person whose address is often changed.

In the case of correspondence addressed to a specified person whose address is not known :—

- (a.) If the place of posting is known, and is in this country, a watch can be kept;
- (b.) If the place of posting is known, and is abroad, a watch can be kept at the office of exchange, but this check is necessarily imperfect;
- (c.) If the place of posting is not known no watch can be kept.

3. In the case of correspondence posted by a suspected person, no effective watch can be kept unless the address to which the letters are sent can be given. Even in that case an effective watch is very difficult if the address is abroad and the place of posting is not known. If the place of posting is known, and a specimen of the handwriting of the suspected person can be given, a watch can be kept, even though the address of the letters is unknown; but the check will be uncertain, since it is easy to vary the place of posting.

4. It is not illegal for the Post Office to give information which can be derived from the outside of letters without detaining or delaying them. For instance, if the Admiralty asked whether Mr. A. B., 1, Blank Street, Portsmouth, was in the habit of receiving letters from Berlin, the question could be answered without the authority of a Secretary of State's warrant. Post Office servants are strictly forbidden to give information of this kind without authority from their superiors.

5. The responsibility for deciding whether to issue a warrant in any particular case lies with the Secretary of State. So far as the Post Office is concerned in the question of policy, a strong view has always been held that the power of interfering with correspondence should be used as sparingly as possible. It is very undesirable to shake public confidence in the security of the post; and if the power of opening letters were used to any considerable extent it would be very difficult to secure that the fact should remain secret. It is seldom possible to confine to a very small number of persons the knowledge that letters are being detained. Moreover, in the case of spies, it appears very doubtful whether any useful results would follow from the examination of correspondence, since it is improbable that any letters of importance would be received or dispatched by a spy without the use of devices for concealment.

H. B. S.

General Post Office, April 15, 1909.

APPENDIX III.

THE COMMON LAW AS TO ESPIONAGE.

MEMORANDUM BY THE HOME OFFICE.

"THE Official Secrets Act, 1889," provides for the punishment of certain defined cases of espionage. For any cases outside that Act, recourse must be had to the law relating to treason, which is partly Statutory, and partly Common Law.

The leading case as to supplying information to a foreign Power is the trial of De la Motte (21 State Trials, 687). De la Motte was a Frenchman of good position, living in London, who, in 1780, when this country was at war with France, engaged in an extensive correspondence with the French Government, supplying them regularly with information likely to be useful in the war, particularly information as to the number and armament of English ships and their movements. He was arrested and tried on charges of treason: (a) of compassing and imagining the King's death by conspiring to levy war against him, and (b) of adhering to the King's enemies; and he was convicted and executed.

The case shows that any person who within this realm supplies any information to an enemy in time of war for the purpose of aiding the enemy is guilty of treason. It also shows that this offence may be committed not only by a British subject, but by a foreigner who is residing for the time being in England and who, therefore, owes to the King only "a temporary allegiance."

It does not, however, decide whether it is treason to supply to a Power not at war with England information which would be useful, or which is intended to be used

in the event of war with England ; and so far as I can find, there is no decision on this point. The other cases which were followed in De la Motte's case were all cases of information supplied in time of war : see Gregg's case (1708), 14 State Trials, 1371 ; and Dr. Hensey's case (1758), 19 State Trials, 1341. So also in Maclane's case in 1797, 26 State Trials, 721. It is submitted, however, that if a case occurred of a person supplying to a foreign Government in time of peace information that could only be used in war and was so intended to be used, a charge of treason could be sustained on the ground that it was an overt act showing an intention to levy war against the King. It is not necessary, to constitute treason under the head of "levying war," that there should be an actual state of war. It has been held that, where in time of peace there is an incitement to war by an overt act or by the publication of a document, this is treason. For example, in Gregg's case (19 State Trials, 1344) Lord Mansfield said : "An overt act of an intention of levying war is settled to be an overt act of compassing the King's death. *Soliciting a foreign Prince even in amity with this Crown* to invade this realm is such an overt act." If merely to incite to war is treasonable, it would appear *a fortiori* that to supply to a possible enemy information which would assist him, and is intended to assist him, in future war is treasonable.

On the other hand, there might be great difficulty, in any case that might arise, in proving that the information is intended to assist in war. If any person were found supplying to another country—say Italy—the plans of a new type of British war-ship, it would be difficult to show that the object was to assist Italy in a future war with England ; it would be argued that such a war was unlikely, and that the only object was to supply the Italian Government with the latest improvements in naval architecture for the purpose of strengthening its own defensive forces. As for persons who merely travel repeatedly over some district of the country, using the Ordnance maps which are sold by the Government, and noting the principal natural features, bridges, railways, telegraphs, &c., it would be impossible to prove anything against them unless their notes clearly showed a military object ; and if they confined themselves, as they probably do, to making mental notes, it would be impossible to prove anything.

In the event of there being materials for a charge of treason, it would be a question whether the charge would be one of high treason or of treason-felony under the Treason-felony Act of 1848. There are great difficulties in the old procedure for high treason ; and all the chief offences which could be charged as treason under the old law can be charged as treason-felony under the Statute—including any intention, expressed by overt act, either "to levy war against His Majesty within any part of the United Kingdom in order by force to compel him to change his Counsels," or "to move or stir any foreigner with force to invade the United Kingdom."

As regards the powers of the police, they can arrest any person whom they reasonably suspect of treason or felony ; but, before they do so, they must have sufficient materials to show that their suspicions are reasonable, *i.e.*, roughly speaking, sufficient to justify their preferring a charge before the magistrates. They have no power to arrest a suspicious person merely on the chance that they may find in his possession documents on which a charge could afterwards be founded. At a time of strained relations no doubt public opinion would support them in arresting, on slight suspicion, any person who might be found near any point which would be of importance in the event of war ; but even then it is to be remembered that the unjustified arrest of a subject of the country with which relations are strained might conceivably precipitate war, while to arrest in time of undisturbed peace the subject of a friendly Power against whom nothing could be proved might result in legal proceedings against the police, and possibly in heavy damages.

Home Office, April 14, 1909.

C. E. T.

APPENDIX IV.

(1.)

NOTE BY THE SECRETARY.

AT the meeting of the Sub-Committee on Espionage held on the 20th April it was decided that the three papers which follow should be circulated to the members of the Sub-Committee :—

1.—*A Bill intituled an Act to amend the Official Secrets Act, 1889.*

In the Official Secrets Act, 1889, the restrictive conditions regarding the arrest and search of offenders largely paralyzed the effectiveness of the statute for emergency purposes. These conditions are made less stringent in the proposed amendments.

2.—*Draft of a Bill to provide for the Control and Publication of Naval and Military Information in cases of Emergency.*

The desirability of restricting or controlling the dissemination of news in time of war or of a period of grave national emergency is thoroughly realized by the Press, and they have expressed their approval of legislation being adopted which has that end in view.

At the 61st Meeting of the Committee of Imperial Defence in December 1904 it was decided that :—

“ A draft Bill should be prepared at once and kept in readiness for submission to Parliament when an emergency arises.”

This Bill was prepared and submitted to the Cabinet and to representatives of the Press.

The subject was again under discussion at the 93rd Meeting in November 1906. The conclusion then was that :—

“ The Committee are of opinion that powers of preventing the dissemination of news which would be valuable to an enemy during or just before the outbreak of war are essential. They further consider that the means of applying such powers should not be delayed until the outbreak of war, and that the Government of the day should, therefore, be enabled to put the necessary restrictions in force by Order in Council at a moment's notice. The question is, however, one which must be left to the decision of the Cabinet.”

The draft Bill has not again been before the Committee of Imperial Defence. It has, however, been amended, and is now printed in its latest form.

3.—*Memorandum by Sir C. Ilbert on Emergency Powers.*

Sir C. Ilbert's Memorandum summarizes the steps that have been taken during the last two centuries of English history to add to the powers of the civil and military authorities in the event of a great national emergency. It also criticizes a draft Bill submitted by Sir John Ardagh in 1888, which it was proposed should be brought into force by an Order in Council. The powers that this proposed Bill was to confer are summarized in paragraph 24 of the Memorandum, and are criticized in the three following paragraphs. In consequence of the adverse opinion expressed by Sir Courtenay Ilbert, who considered that a measure adequate to the necessities of the case could be prepared within an hour or so and passed through both Houses in a single day, the Bill was dropped in 1896.

C. L. O.

2, Whitehall Gardens, S.W.,
May 3, 1909.

(2.)

A BILL INTITULED AN ACT TO AMEND THE OFFICIAL SECRETS ACT, 1889.

A.D. 1908.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Publication and communication of certain official documents and information restricted.

1.—(1.) If any person, without authority given on behalf of His Majesty, publishes or communicates to any other person any document or information to which this Act applies, that person shall, if the jury are of opinion that the document or information ought not, in the interests of the State, to have been so published or communicated, and that the person charged knew, or ought to have known, that the document or information ought not to be so published or communicated, be guilty of a misdemeanor, and shall on conviction be liable to imprisonment, with or without hard labour, for a term not exceeding one year, or to a fine, or to both imprisonment and fine.

(2.) If it is shown to the High Court, on the application of the Attorney-General, that the publication or communication by any person of any document or information to which this Act applies, is threatened or apprehended, the court may grant an injunction restraining the publication or communication of the document or information.

(3.) Authority shall be given to publish or communicate any document or information to which this Act applies if, in the opinion of the person giving the authority on behalf of His Majesty, there is no objection in the interests of the State to that publication or communication; but leave so given shall not affect the right of any other person to restrain the publication or communication of the document or information, or to recover damages, or take any other proceedings, in respect thereof.

(4.) The documents to which this Act applies are any State documents (including sketches, plans, or models) of a secret or confidential character, and any communication relating to public affairs from or to any predecessor of the reigning Sovereign or any Regent during his regency, the date of which is less than forty-two years previous to the publication or communication, or in the case of an application for an injunction, previous to the application, and any communication relating to public affairs from or to the reigning Sovereign, whether before or after his accession, and any documents (including sketches, plans, or models) which have been obtained or taken by means of any act which constitutes an offence against the Official Secrets Acts, or which have been communicated in contravention of any provision of those Acts, and the information to which this Act applies is information or knowledge derived directly or indirectly from any such document, or obtained directly or indirectly by means of any communication which was in contravention of any of the provisions of the Official Secrets Acts.

Power to arrest and remand offenders before consent of Attorney General obtained.

3. A warrant for the arrest of a person guilty of an offence under the Official Secrets Acts, may be issued and executed, and a person apprehended for any such offence may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of the prosecution has not been obtained, but no further or other proceedings shall be taken until such consent has been obtained.

Search warrants.

4. If a court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises any document (including any sketch, plan, or model) which has been obtained or taken by means of any act which constitutes an offence against the Official Secrets Acts, or which has been communicated in contravention of any provision of those Acts, the court may grant a search warrant authorizing the constable named therein to enter the premises between the hours of six o'clock in the morning and nine o'clock in the evening, and, if necessary, by force, whether by breaking open doors or otherwise, and to seize any such document which he has reasonable ground for suspecting to have been so obtained or taken or communicated.

Application, short title, and construction.

5.—(1.) In the application of this Act to Scotland, the High Court means the Court of Session, and a "court of summary jurisdiction" means the sheriff or any magistrate of any royal, parliamentary, or police burgh officiating under the provisions

of any local or general police Act; and "interdict" shall be substituted for "injunction."

(2.) In the application of this Act to a British possession, the High Court means a court exercising in that possession the like authority as the High Court in England, and a court of summary jurisdiction means the court, justices, or magistrates who exercise jurisdiction with respect to the grant of search warrants.

(3.) This Act may be cited as the Official Secrets Act, 1908, and shall be construed as part of the Official Secrets Act, 1889, and that Act and this Act may be cited together as the Official Secrets Acts, 1889 and 1908, and are in this Act referred to as the Official Secrets Acts. 52 & 53
Vict., c. 52.

(3.)

DRAFT OF A BILL TO PROVIDE FOR THE CONTROL OF THE PUBLICATION OF NAVAL AND MILITARY INFORMATION IN CASES OF EMERGENCY.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:— A.D. 1907.

1.—(1.) While this Act is in force no information with respect to any naval or military matters, and no statement, comment, or suggestion calculated directly or indirectly to convey any such information, shall be published, except where the information is furnished by the Admiralty or the Army Council or is sent during a time of war under censorship from the seat of war. Control of publication of naval and military information while the Act is in force.

(2.) The owner, publisher, and editor of any newspaper, magazine, book, pamphlet, or other publication by means of which any information, statement, comment, or suggestion is knowingly published in contravention of this Act, and any other person who knowingly sells any newspaper, magazine, book, pamphlet, or other publication containing, or who is otherwise knowingly responsible for the publication of any such information, statement, comment, or suggestion, shall severally be liable in respect of each offence, on conviction on indictment, to a fine not exceeding a thousand pounds, or to imprisonment, with or without hard labour, for a term not exceeding twelve months, or on summary conviction to a fine not exceeding a hundred pounds, or to imprisonment with or without hard labour for a term not exceeding three months.

(3.) If any person is charged before a justice with an offence under this Act, no further proceeding shall be taken against that person without the consent of the Attorney-General or Solicitor-General, except such as the justice may think necessary, by remand or otherwise, to secure the safe custody of that person.

(4.) The expenses of the prosecution of an offence under this Act shall be defrayed in like manner as in a case of felony.

(5.) Any justice or chief officer of police, if he has reasonable cause to believe that an offence under this Act is about to be or has been committed by the publication of any newspaper, magazine, book, pamphlet, or other publication, may by written order authorise any constable to enter, if need be by force, any place in which he has reason to believe that the newspaper, magazine, book, pamphlet, or publication is being or has been printed or otherwise prepared, and examine the place, and search for and seize any copies of the newspaper, magazine, book, pamphlet, or other publication, or any material used in the preparation thereof, by means of which he has reasonable grounds for suspecting that an offence against this Act is about to be or has been committed.

If any person fails to admit any constable so authorised, on the production of his authority, if demanded, into any place into which he is authorised to enter by the order, or in any way obstructs the constable in the execution of his powers under the order, that person shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding fifty pounds.

The expression "chief officer of police"—

(a) as respects England, in the City of London means the Commissioner of City Police, and in other places has the same meaning as in the Police Act, 1890;

- (b) as respects Scotland, has the same meaning as in the Police (Scotland) Act, 1890 ;
- (c) as respects Ireland, means in the police district of Dublin metropolis, either of the Commissioners of Police for that district, and elsewhere the Inspector of the Royal Irish Constabulary ; and
- (d) as respects the Channel Islands and the Isle of Man, means the officers who have the chief control of the police in those islands respectively.

Power to
put Act in
force by
Order in
Council.

2.—(1.) His Majesty may, by Order in Council, declare that this Act shall be in force in any case of emergency in which it appears to him that the publication of information prohibited by this Act might be prejudicial to the interests of the realm, and any Order so made may be revoked by any subsequent Order.

(2.) This Act shall have effect only while an Order in Council declaring the Act to be in force is in operation ; but any legal proceedings may be instituted, continued, or enforced, and any penalty or punishment may be imposed, in respect of an offence under this Act committed while the Act was in force, although the Order in Council in pursuance of which the Act was in force is no longer in operation.

Extent and
application
of Act.

3.—(1.) This Act shall extend to the whole of the British Islands, and the Royal Courts of the Channel Islands shall register this Act accordingly.

(2.) In the Channel Islands and the Isle of Man, offences may be prosecuted, fines recovered, and proceedings taken under this Act in such courts and in such manner as may for the time being be provided in the Channel Islands and the Isle of Man by law or if no such express provision is made, then in and before the courts and in the manner in which the like offences, fines, and proceedings may be prosecuted, recovered, or taken therein by law, or as near thereto as circumstances admit.

(3.) As respects prosecutions in Scotland, the Lord Advocate, and as respects prosecutions in Ireland, the Attorney-General or Solicitor-General for Ireland, and as respects prosecutions in the Channel Islands or the Isle of Man, the person who exercises in those Islands respectively the like functions as the Attorney-General in England shall be substituted for the Attorney or Solicitor-General.

Short title.

4. This Act may be cited as the Publication of Naval and Military Information Act, 1907.

(4.)

MEMORANDUM BY SIR COURTENAY ILBERT ON EMERGENCY POWERS.

1. The powers which may, independently of statute, be lawfully exercised by the Crown and its military officers in the event of an invasion of the realm, or of an imminent risk of such invasion, have never been precisely defined, and are incapable of precise definition. It may be said in general terms that in such an event it would be the duty of the military authorities to take all steps which are in their opinion necessary for the defence of the realm ; that it would be the duty of the civil authorities and of every subject of the Queen to give the military authorities aid and support in taking such steps ; and that it would be the duty of the State to compensate out of public money persons suffering damage through the exercise of the powers incidental to the performance of those duties.

2. In case of national danger private rights are necessarily subordinated to the interests of the public, and any attempt to specify in detail and to express in statutory language the powers exercisable by the civil and military authorities under such circumstances might throw doubt on the prerogative powers of the Crown, and would probably involve the imposition of restrictions and limitations which would be inconvenient and misleading, and which in practice it would be necessary to disregard.

3. War implies a temporary suspension of the ordinary law. *Inter arma silent leges*. There is high authority for saying that this is the real meaning of the proclamation of martial law. " In proclaiming martial law the executive authority in fact declares itself obliged, for the protection of the community, to neglect law, trusting " to the Legislature to relieve all who, in obedience to the constituted authority, may

"have acted in defence of the public safety, from the consequences of having acted unlawfully."^{*}

4. There is, however, another sense which, as Mr. Dicey points out,[†] has been sometimes attached to the expression "martial law." "Martial law," he says, "is sometimes employed as a name for the common law right of the Crown and its servants to repel force by force in the case of invasion, insurrection, riot, or generally of any violent resistance to the law. This right, or power, is essential to the very existence of orderly government, and is assuredly recognized in the most ample manner by the law of England."[‡]

5. It may therefore sometimes be a nice question whether acts done in time of war, or similar emergencies, are legal as being done in exercise of common law powers, whether they be the prerogative powers of the Crown, or the common law right to resist force by force, or are technically illegal but morally justifiable and on that ground entitled to condonation or indemnity. If this question were raised before a court, a sensible jury would often cut the knot by refusing to convict.

6. The prerogative powers lawfully exercisable by the Crown in time of war were, on a famous occasion, put very high by a great advocate of popular rights.

"In times of war," said Mr. St. John in his defence of Hampden, "not only His Majesty, but likewise every man that hath power in his hands may take the goods of any within the realm, pull down their houses, or burn their corn, to cut off victuals from the enemy, and do all other things that conduce to the safety of the kingdom without respect had to any man's property."[§]

7. St. John defined a time of war as a time "when the course of justice is stopped, and the courts of justice shut up."^{||} But this definition, though it may accurately describe the circumstances under which justice may be dispensed by military tribunals as "a rough substitute"[¶] for the ordinary courts, yet it is obviously inadequate as a description of the circumstances under which exceptional powers may be exercised. Courts of justice may still be sitting in times of war. They were probably sitting during the rebellions of 1715 and 1745.

8. During actual war no practical difficulty would arise. No one would suggest that an Act of Parliament was required for authorizing General A to fight a battle on Farmer B's field. But a question might be raised whether and to what extent the prerogative powers of the Crown referred to above are lawfully exercisable, not merely in time of actual invasion or other time of war, but also during a time of apprehended invasion, or in other times of great national emergency. The test being necessity, the same principles would seem to apply in each case. But occasions might arise on which it might be desirable to affirm expressly by legislation the right to exercise these powers.

9. The jurisprudence of some foreign countries recognizes a state intermediate between peace and war, which is called the state of siege. "The state of siege, where the civil law is suspended for the time being, or, at least, is made subordinate to the military, and the place is put under martial law, or under the authority of military power, may result from the presence of a foreign enemy or by reason of a domestic insurrection, and the rule applies to a district of country as well as to a fortress or city."^{***}

10. There is nothing in the law of England equivalent to what is called in France the "Declaration of the state of siege." And there is no probability of English statesmen being willing to place permanently on the English statute book provisions corresponding to those under which a state of siege may be declared in France.^{††} The Government will doubtless continue to rely, as it has relied in the past, on the discretion and courage of its officials, civil and military, to deal with cases of difficulty, whether

* Extract from a despatch of the Duke of Newcastle written with reference to an Indemnity Act passed by the Legislature of St. Vincent in 1862 for the purpose of indemnifying the Governor against the consequences of a proclamation of martial law. The despatch is set out in an appendix to Clode's "Military Forces of the Crown," ii., p. 511. The whole of the appendix in which this quotation occurs should be read. See also, generally, Chapters I and XVIII of the same book.

† "The Law of the Constitution," 3rd ed., p. 266.

‡ It was recognised by the Acts passed in 1799 and 1803 (39 Geo. III, c. 11 (Irish Act) and 43 Geo. III, c. 117). See Clode, ii, 171.

§ Cobbett's State Trials, vol. iii., pp. 904 and 905. See Clode, "Military Forces," Chapter I.

|| Coke, in arguing on the Petition of Right, said "When the courts are open, martial law cannot be executed." (See quotations in Clode, ii, p. 158.) Probably Coke and St. John were borrowing from some common source.

¶ See Sir James Mackintosh, quoted by Clode, "Military Forces of the Crown," ii, p. 486.

*** Halleck's "International Law," ed. of 1878, i, p. 500.

†† See Dicey, "The Law of the Constitution," 3rd ed., pp. 265, 269.

arising out of riot, rebellion, or invasion, and will be disposed to limit its legislative proposals to those actually required by the circumstances of each particular case.

11. It is a fallacy to suppose that extra-legal acts could be clothed in legal language, or that any legal formula could be devised which would relieve civil and military authorities from the responsibility to be incurred in exceptional circumstances. In the event of invasion, or of imminent risk of invasion, it might, and probably would, be necessary to take much stronger steps than would be authorized by the War Office draft. It would be the duty of the civil and military authorities to take such steps if they considered them requisite, and to face the risk of legal proceedings, trusting to the patriotism, good sense, and consideration of their countrymen for indemnity. A civil or military officer who hesitated to take such risks would be unfit for his post.

12. If any legislation were required to supplement, in the event of invasion or apprehended invasion, the powers exerciseable under the ordinary law, it should probably be expressed in very simple and general terms. The well-known Roman formula, "*Videant consules ne quid detrimenti respublica capiat*," would supply an appropriate precedent. If powers were granted specifically there would be a risk of their being construed as derogating from general powers. Legislation might take the form of declaring, as suggested above, that a national emergency has arisen during which the Crown and its servants may exercise the rights and powers exerciseable in time of war. But it is doubtful whether any legislation would be required in the first instance, and whether the exigencies of the case would not be best met by a Royal proclamation issued on the advice of the responsible Ministers of the Crown, stating and emphasizing the duties of the civil authorities and of the public, and promising compensation for private injury caused by steps taken in the public interest. Difficulties arising in the course of war, or of preparations for war, cannot be foreseen, and can only be met by subsequent legislation giving indemnity against legal proceedings, and providing compensation for damage sustained.

13. These general conclusions are supported by a review of the steps which have been actually proposed and taken during the last two centuries of English history. The following narrative of those steps is taken from the late Mr. Clode's "Military Forces of the Crown" (i., pp. 10, 11)*:—

Prerogative
power of
the Crown
relied upon
till 1798.

" (18.) Notwithstanding rebellion (in 1715 and 1745) and threats of invasion, from " the time of the Spanish Armada to the year 1797 no application had been " made to Parliament to increase the powers of the Crown for the defence " of the realm. All preparations prior to that year had been carried out " (through the lords lieutenants of the various counties) under the ancient " prerogative of the Crown.† On these powers and the readiness of " Parliament to grant acts of indemnity, the Ministers of the Crown placed " their reliance.

Rebellion of
1715.

Compensa-
tion for
losses and
Act of In-
demnity.

" (19.) In 1715‡, for the safety of the fortress and town within the walls, a con- " siderable portion of the property beyond the walls of the town of Berwick " had to be destroyed. A meeting of the corporation and townspeople was " held, attended by the Governor and military officer having charge of the " defence.§ The value of the property was discussed and sent to the " Ordnance Office, and then the work of demolition commenced. It is well " known that Parliament addressed the Throne for an account to be taken " of all losses incurred by that rebellion.|| The officers of the Exchequer " assessed the damage at 5,579*l.* 15*s.* 3*d.*,¶ which was provided for out of " ways and means, and an Act of Indemnity was passed.**

Rebellion of
1745.

" (20.) The rebellion of 1745, and the preparations for the French invasion, were " communicated to Parliament by message from the Throne on the

Act of
Indemnity.

* See also Chap. XVIII (vol. ii) for a further account of the steps taken in 1715, 1745, 1780, 1798, and 1833.

† See "Instructions in Hen. VIII's reign," vol. iii, Cal. Dom. Pap. 45, and the proclamation of 1779, Ann. Reg., p. 362.

‡ There are several earlier Acts of Indemnity to which reference should perhaps be made. In the civil war, strange as it may seem to be, the parliamentary officers and soldiers appear to have been troubled with actions and indictments in the civil and criminal Courts. Application was made to Parliament, and an Ordinance in 1647 was passed for their relief. (See 3 Parl. Hist., pp. 570, 581.) 2 Com. Journ., pp. 390, 412, 568, 597, 693. The other instance was in Will. III's reign. (See 4 W. and M., c. 19.) As to expediency of passing such Act. (See the question discussed in the House of Commons Committee on Ceylon (1850), vol. xii of Parl. Pro., pp. 221-3.)

§ Ord. Order Book, pp. 248-57.

|| 18 Com. Journ., p. 229.

¶ Pp. 494-5.

** 1 Geo. I (Sess. 2), c. 89.

- " 19th December, announcing at the same time that the Crown had ordered 6,000 Hessian troops into the kingdom, under a Treaty of the June previous, which was laid upon the table of the House with the message.*
- " Upon the address of thanks opposition arose, and beyond a vote of credit in the following May for 500,000*l.* 'to enable His Majesty effectually to suppress the rebellion,' and an Act to expedite the trial of offenders, little was done by Parliament.† Acts of Indemnity were passed on this occasion to protect those engaged under the orders of the Crown in putting down the rebellion,‡ but no compensation for losses was granted except to the city of Glasgow.§
- " (21.) Upon the threat of an invasion by France at the end of the last century, "no modern record of the necessary precautions appearing to exist, Mr. Pitt gave an instruction to Mr. Bruce to search all the records of State Paper Office, and to prepare an account of the measures adopted by Queen Elizabeth on the descent of the Spanish Armada upon these shores. One copy of this report, intituled 'On the arrangements which were made for the internal defence of these kingdoms when Spain, by its Armada, projected the invasion and conquest of England, and the application of these wise proceedings of our ancestors to the present crisis of public safety, dated 1798, and made to the Right Honourable Henry Dundas, by John Bruce,'|| has been deposited in the British Museum, and will be found on a reference to the catalogue of the Grenville Library, No. 16,245, under the name of 'Bruce.' Either from recommendations contained in that report, or in a MS. memoir by Lord Cornwallis of August 1796, Mr. Pitt was induced to come to Parliament for additional powers, first in 1798, and again in 1803."¶

Threat of
French in-
vasion in
1798 and
1803.

14. The Act of 1798 (38 Geo. III, c. 27) requires lieutenants and deputy lieutenants to procure returns of men between the ages of 15 and 60, and also of vehicles, horses, cattle, sheep, provisions, mills, and ovens, and other things which may be useful to an enemy or applicable to the public service, showing which of them the owners are willing to furnish for the public service and on what terms (s. 1).

The King may also require lieutenants to appoint officers to be ready for training men willing to engage (s. 2).

In case of actual invasion, or if His Majesty sees special cause to apprehend that such invasion will be actually attempted by the enemy, the King may by order under his Sign-Manual authorize lieutenants and deputies to order the removal of boats, wagons, horses, &c., and to destroy any which may be of advantage to the enemy, and generally to do and act in the premises as the public service and the exigencies of particular cases shall require (s. 7).

The Crown may also authorize persons to treat for the use of ground for the public service, and the persons so appointed may, in case of refusal or inability to treat, apply to two justices or deputy lieutenants to put His Majesty's officers into possession, and then a jury is to be summoned to ascertain the compensation. But no ground is to be taken without the owner's consent, unless the necessity is first certified by the Lord Lieutenant or two deputy lieutenants, or unless the enemy has actually invaded the kingdom (s. 10).

The Treasurers are to appoint persons to ascertain the value of articles taken or injured for the public service and to pay compensation for them. If the owners are not willing to accept the compensation it is to be settled by two justices (s. 11).

The Act was to "have continuance during the present war with France," a n therefore ceased to operate at the Peace of Amiens in 1802. It was formally repealed by the Statute Law Revision Act of 1871 (34 and 35 Vict., c. 116).**

15. In 1803, when war with France was resumed after the rupture of the Treaty of Amiens, and when a formidable host was assembled at Boulogne for the invasion of England, three Acts were passed for the better protection of the realm (43 Geo. III, cc. 55, 96, and 120).

* 25 Com. Journ., p. 25.

† Pp. 151-238, 246.

‡ 19 Geo. II, c. 20; *ib.*, c. 29, s. 18.

§ See the important debate on this grant, vol. xiv, Parl. Hist., pp. 497-538.

|| See Appendix (A) to this Memorandum.

¶ 33 Parl. Hist., p. 1358; 38 Geo. III, c. 27.

** As to the orders given (whether under this Act or otherwise does not seem clear) for the removal or destruction of property, see Clode, i, p. 12.

16. The first of these Acts (43 Geo. III, c. 55) repeated, with some modifications, the provisions contained in the Act of 1798. It was subsequently described by the Secretary at War (the Right Honourable Charles Yorke) as containing provisions for enabling His Majesty to take such preliminary measures for ascertaining the strength and resources of the different parts of the country as were necessary with a view to further measures of internal defence, and as likewise providing a compendious mode of acquiring possession of such property on the part of the public as might be found necessary, with provisions for indemnifying those persons who might suffer either by the preparations or by actual invasion.*

This Act appears to have passed through Parliament without comment and received the Royal Assent on June 11th, 1803.

Like the Act of 1798, it was expressed to "have continuance during the present hostilities with France," and therefore dropped with the peace of 1814. It was formally repealed by the Statute Law Revision Act, 1872 (35 & 36 Vict., c. 63).

17. Much more interest was excited by the two later Acts of 1803 (cc. 96 and 120), which were described as authorizing a levy *en masse*. These Acts were repealed in 1906 by 46 Geo. III, c. 90, and have been superseded by the later Acts for establishing the local Militia, an account of which is to be found in the extracts from the Manual of Military Law, printed as Appendix (B), to this Memorandum.

18. Many of the provisions contained in the Act of 1798, and in the first Act of 1803, have been made unnecessary by change of circumstances, or by subsequent legislation. Most, if not all, of the necessary information as to the matters about which returns were to be obtained can now be derived from Census reports, local directories, and other sources of statistical information which did not exist in 1798 or 1803.

19. The provisions for taking land have been superseded by the Defence Acts, 1842 to 1873.†

Under these Acts the Secretary of State is empowered to take land compulsorily for—

- (a) the service of the Ordnance Department ; or
- (b) the defence of the realm.

Unless the enemy has actually invaded the United Kingdom the necessity or expediency of taking the land without the owner's consent must be previously certified by the lord lieutenant or two deputy lieutenants of the county, and the taking must be authorized by a warrant of the Treasury.

The procedure is as follows :—

The Secretary of State may enter on, survey, and mark out the lands, and treat and agree with the owners of the lands, or with any person interested therein, either for the absolute purchase of the lands or the use thereof during such time as the exigency of the public service requires.

If the persons interested, after 14 days‡ from the date of service of notice to treat, fail to treat, the Secretary of State may require two justices or three deputy lieutenants (one of whom must be a justice) to put the Secretary of State, or person appointed by him, into immediate possession of the lands. The justices or deputy lieutenants are bound to act on the requisition, and for this purpose to issue warrants commanding possession to be given, and also to issue warrants to the sheriff requiring him to summon a jury. The jury so summoned is to assess the compensation to be paid either for the absolute purchase of the lands or for the possession or use thereof, as the case may be, and any person dissatisfied with their verdict may appeal to the High Court, which may summon another jury.

20. Under section 16 of the Regulation of the Forces Act, 1871 (34 & 35 Vict., c. 86), when Her Majesty by Order in Council declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government shall have control over the railroads in the United Kingdom, or any of them, the Secretary of State may, by warrant, empower any person named in the warrant to take possession in the name or on behalf of Her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any

* "Hansard," xxxvi, p. 1624, July 18, 1803.

† 5 & 6 Vict., c. 94; 17 & 18 Vict., c. 67; 22 Vict., c. 12; 23 & 24 Vict., c. 112; 28 & 29 Vict., c. 68; 36 & 37 Vict., c. 72.

‡ This is a good illustration of the kind of statutory restriction which in practice would be disregarded in case of emergency. There is no doubt that in such a case immediate possession would be taken without waiting till the expiration of the statutory 14 days.

plant without taking possession of the railroad itself, and use it for Her Majesty's service at such times, and in such manner, as the Secretary of State may direct. The directors, officers, and servants of the railroad are to obey the directions of the Secretary of State as to the use of the railroad or plant for Her Majesty's service. The warrant is to remain in force for one week only, but may be renewed from week to week so long as in the opinion of the Secretary of State the emergency continues. Compensation is to be paid out of money provided by Parliament for any loss or injury sustained by the exercise of the powers under this section. This section extends to tramways.

21. Under section 8 of the Customs and Inland Revenue Act, 1879 (42 and 43 Vict., c. 21), arms, ammunition, and gunpowder, military and naval stores, and any articles which Her Majesty shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores, provisions, or any sort of victual which may be used as food for man, may, by proclamation or Order in Council, be prohibited either to be exported or carried coastwise.

22. Under section 115 of the Army Act (44 and 45 Vict., c. 58) as supplemented by the National Defence Act, 1888 (51 and 52 Vict., c. 31), carriages, animals, and vessels may be impressed, and, if necessary, seized by force under a requisition of emergency issued in pursuance of an order of the Crown.

23. The National Defence Act, 1888 (51 and 52 Vict., c. 31, s. 4), gives the Government traffic precedence over other traffic on railways whenever an order embodying the Militia is in force (that is to say, in case of imminent national danger or of great emergency).

24. The War Office authorities have prepared the draft of a measure proposing to confer on the executive in case of national emergency powers some of which have been already conferred by the existing law, whilst others are new.

The measure is to be brought into force by an Order in Council, and whilst it is in force the following powers may be exercised:—

The Secretary of State may empower a competent military authority—

- (1) to pass over, use, and occupy lands and private roads;
- (2) to use water supplies;
- (3) to make temporary roads, bridges, &c.;
- (4) to exercise exclusive possession over lands required for camping, &c.

A competent military authority may make regulations for the purpose of preventing damage of horses, cattle, and other property.

The Secretary of State may authorize a competent military authority to require a local authority to do all such things as may require to be done in the public service or to defeat the views of the enemy, and in particular—

- (1) to procure returns of animals and other matters useful to the public service or to the enemy;
- (2) to order the removal or destruction of such animals and other things;
- (3) to order the removal of the inhabitants of villages, &c.;
- (4) to destroy any buildings, &c., the destruction of which is considered necessary;
- (5) to compel the service of labourers for any of these services.

The Secretary of State may—

- (1) prohibit the export of horses and any warlike stores;
- (2) require precedence for Government over ordinary traffic on railways;
- (3) summarily occupy lands and buildings required for defence;
- (4) order fortresses to be put on a war footing.

A competent military authority may—

- (1) seize or exercise a censorship over the telegraphic or postal services;
- (2) exercise a censorship over the press.

The military and local authorities are authorized to commit to prison persons being, or suspected of being, spies.

The military authorities may seize all warlike stores, whether in course of manufacture under contract with a foreign Government or not.

25. It will have been observed from the foregoing review, that several of the powers proposed to be given by this draft, such as the powers to take land, prohibit exportation of stores, and require precedence on railways, are already conferred by

existing enactments. Warrants for opening or detaining letters or telegrams may be granted by the Secretary of State under the Post Office Acts. The Official Secrets Act, 1889 (52 and 53 Vict., c. 52), gives useful powers for dealing with spies. There would be no difficulty about arresting a suspected spy, and if there were any practical difficulty about keeping spies or other persons under detention, it would probably be met by a temporary suspension of the Habeas Corpus Act. A stringent Act about aliens was passed in 1848, and was temporarily revived by the Prevention of Crime (Ireland) Act, 1882 (45 and 46 Vict., c. 25, s. 15 and Third Schedule). It might perhaps be revived again if occasion required. It does not seem quite clear whether under section 8 of the Customs and Inland Revenue Act, 1879, the exportation of horses could be prohibited. This might be made clear. In this and other ways the existing statutory provisions may from time to time be supplemented or improved whenever a favourable opportunity occurs.

26. But the draft prepared by the military authorities raises a much larger question, namely, whether it is desirable to prepare for submission to Parliament a comprehensive emergency code. Before the preparation of such a draft is undertaken, the following preliminary questions ought to be considered by the Secretary of State from the parliamentary as well as from the military point of view :—

- (1.) Whether there is any chance of inducing Parliament to take up such a measure in time of peace.
- (2.) Whether it would be worth while to elaborate a draft on the subject for the purpose of putting it aside in a pigeon-hole, and bringing it out when necessity requires.
- (3.) In the event of the last question being answered in the affirmative, whether the provisions of such a measure should be general or specific.

27. There is strong ground for holding :—

- (1.) That in ordinary times Parliament would refuse to trouble itself about this subject at all ;
- (2.) That even if it did give attention to the subject, it would be reluctant in times of peace to confer on the military authorities, either directly or through an Order in Council, any powers in excess of those given by the existing law, and would be disposed to qualify any such powers by numerous restrictions which in times of emergency would have to be disregarded ;
- (3.) That if a real emergency arose the Government could obtain from the Legislature almost any powers for which it chose to ask ;
- (4.) That the simpler and more general the terms in which emergency powers are expressed the better ;
- (5.) That consequently a measure adequate to the necessities of the case could, whenever those necessities arise, be prepared within an hour or so and passed through both Houses, if necessary, in a single day ;
- (6.) That in the meantime all the necessary powers would have to be exercised, whether legally or extra-legally, and that any illegality would have to be condoned by a subsequent Act of Indemnity.

28. Under these circumstances the elaboration of a statutory “emergency code” would appear to be an academic exercise on which a Government official would not be justified in spending his time unless he happened to be in the enjoyment of superabundant leisure.

August 5, 1896.

C. P. ILBERT.

Appendix (A).

Mr. Bruce's Report of 1798.

IN this report the prerogative powers exercised by the Crown at the time of the Spanish Armada are summed up in the following words:—

- "The Crown during the reign of Elizabeth exercised the power of calling on
 "countries, towns, bodies corporate, beneficed ecclesiastics and others to
 "furnish in case of menaced invasion quotas of arms, ammunition, military
 "stores, pioneers, artificers, &c., necessary for the army, and armed vessels,
 "mariners, and a proportion of victuals for them, to assist in repelling the
 "common enemy, making the Lord Lieutenant, his deputies, and justices,
 "judges of such exemptions as might be pleaded from any of these services.
 "The Crown, by the like power delegated to the Lord Lieutenants, could
 "call on all landlords, farmers, &c., to furnish carriages, posts to convey
 "information of the approach or actual landing of the enemy, and by himself
 "or by his deputies to issue orders for driving away the cattle and horses
 "from the coast inland; for burning and destroying the corn or whatever
 "might be of use to the enemy; for breaking down bridges, cutting up
 "roads, and in general for doing everything which might prevent, or might
 "check if he actually landed, his progress in conquest."

It appears from the report itself that in addition to the powers so enumerated, the Crown exercised the power of preventing persons leaving towns or villages without a justice's order, of requiring returns to be made of all able-bodied men, and of stopping and of bringing before justices all suspected persons.

Appendix (B).

Manual of Military Law (3rd Edition).

CHAPTER IX.

101. At the end of the last and beginning of the present century, various Acts were passed for raising forces to resist the threatened French invasion, which were based on the liability of every man to aid in the defence of the realm, either by personal service or by contributions.*

Acts for raising forces to meet apprehended French invasion, 1796-1812.

102. They were superseded in 1808 by Acts establishing a local Militia in England and Scotland. These Acts were amended in the following years,† and were finally

Acts establishing local Militia.

* 47 Geo. III, cc. 4 and 24, and as to Scotland, cc. 5, 39. In 1797 a force of provisional cavalry was to be raised as an augmentation to the Militia under 37 Geo. III, cc. 6, 23, 139; 38 Geo. III, cc. 51, 94; 39 Geo. III, c. 23. As to returns of men, provisions, &c., 38 Geo. III, c. 37; 43 Geo. III, c. 55. An army of reserve was provided by 43 Geo. III, cc. 82, 100, 123, and 43 Geo. III, c. 56; and as to Scotland, 43 Geo. III, cc. 83, 124; 44 Geo. III, c. 66; and as to Ireland, 43 Geo. III, c. 83; 44 Geo. III, c. 74; and as to the City of London, 43 Geo. III, c. 101; 44 Geo. III, c. 96; the first of which recites that the City, notwithstanding their exemption from the liability to provide men for military service, have offered to raise the force mentioned in the Act. A levy *en masse* was provided for by 43 Geo. III, c. 96, amended by c. 120. The first Act recites that it is expedient "to enable His Majesty more effectually to exercise his ancient and "undoubted prerogative of requiring the military service of all his liege subjects in case of an invasion of "the realm by a foreign enemy," extended to the City of London by 46 Geo. III, c. 125. The foregoing Acts were repealed in 1806 by 46 Geo. III, cc. 51, 63, 90, 144; and the Training Act (46 Geo. III, c. 90) was passed, which was only repealed in 1872 by the Statute Law Revision Act (35 & 36 Vict., c. 63), but was never put in force.

† 48 Geo. III, c. 111; and as to Scotland, c. 150; amended by 49 Geo. III, cc. 40, 48, 82, 129, and 50 Geo. III, c. 25. See Clode, "Mil. Forces," i, 325-32.

consolidated in 1812. The general provisions of the Acts passed in that year⁶ are still in force, though the local Militia is in abeyance.

Account of
local Militia.

103. The local Militia is in effect the old general levy, as the Acts provide for raising a force in each county by ballot, in the same manner as under the general Militia Acts, from among men between the ages of 18 and 30. The number in each county, including any effective yeomanry and volunteers in the county, was to be equal to six times the quota fixed for the regular Militia of the county, but since 1871, is to consist of such number of men as may from time to time be provided by Parliament.[†] A man when drawn in the ballot must serve for four years without any power to find a substitute, and without receiving any bounty. With some exceptions (such as men with previous service, or men with more than two children), there are no exemptions from liability to serve. Parishes may provide volunteers and pay them bounties out of the rates. The counties are liable to an annual fine of 15*l.* for each man short of the quota.

Training,
command,
and embodi-
ment.

104. The force is to be annually trained, and may be called out for the suppression of riots, and preliminary training may be required. The force may be embodied in case of invasion or the appearance of an enemy on the coast, and, in case of rebellion, Parliament is to meet within 14 days after the order for embodiment.[‡] As regards command, officers, and discipline, the local Militia,[§] and the force whenever called out is subject to military law. The property qualification of officers was abolished by 32 & 33 Vict., c. 13. The expenses were to be paid by the Crown, and the storage of arms, which was formerly a county charge, is now also borne by the Crown.^{||}

Not raised
since 1815.

105. After the peace in 1815 the King in Council was authorized[¶] to suspend the ballot for and enrolment of the local Militia, and the force has not since been raised. Orders in Council were made annually under the Act up to the year 1832,^{**} when they seem to have been discontinued, and the Act authorizing the suspension was repealed as obsolete in 1873.^{††}

[As to the Militia of Scotland and Ireland, see paras. 106-109 of the same chapter.]

⁶ 52 Geo. III, c. 38; and as to Scotland, c. 68. See also the Amendment Acts, 52 Geo. III, c. 116; 52 Geo. III, cc. 28, 29, and 45 & 46 Vict., c. 49, 3rd sched.

[†] 34 & 35 Vict., c. 86, ss. 7, 8, 19, re-enacted by 45 & 46 Vict., c. 49, 3rd sched.

[‡] The Act of 1870 (33 & 34 Vict., c. 68), which allowed the Militia to be embodied in case of imminent national danger or great emergency, was repealed by 38 & 39 Vict., c. 69, as if it had not applied to the local Militia.

[§] See above para. 83, *et seq.*, and Militia Act, 1882 (45 & 46 Vict., c. 49, 3rd sched.). The Army Act applies to the local as well as to the general Militia.

^{||} It appears to have been transferred to the Crown, as in the case of the general Militia, by 35 & 36 Vict., c. 68.

[¶] By 56 Geo. III, c. 38.

^{**} Clode, "Mil. Forces," i, 333, in which 1836 appears to be a misprint for 1832.

^{††} By the Statute Law Revision Act, s. 73, 36 & 37 Vict., c. 91.

APPENDIX V.

SUGGESTIONS FOR AMENDING THE OFFICIAL SECRETS ACT, 1889.

MEMORANDUM BY THE HOME OFFICE.

IN the following note suggestions are made for the amendment of the Official Secrets Act, 1889,* only so far as it applies to actual espionage, or to the preparation for and carrying out of those secret attacks on arsenals, explosive factories, and works of strategic importance which would be attempted during the critical moments preceding or immediately following a declaration of war or an attempted invasion. It is desirable to keep the amendment of the Act for this purpose separate from any amendments which may be proposed with a view to preventing the publication of secret documents or intelligence, as probably Parliament would at the present moment be ready to deal strongly with espionage, while the experience of the Official Secrets Bill of last Session shows what controversial questions arise when any attempt is made to restrict publication.

The principal provisions dealing with espionage and like offences are contained in section 1 of the Act (printed below). The section is an extremely complicated one, and its drafting is severely criticized in Stephen's "Digest of the Criminal Law," where it is pointed out that subsection (1) creates about eighty different misdemeanours, all of which are by subsection (3) made felonies if a certain condition is proved, which is almost certain never to be really absent but which it would be rarely possible to prove. In spite of this it appears better to accept this section as the basis of the law and to suggest amendments, rather than to attempt entirely fresh legislation.

Section 1 (1) (a).

All the offences created by this enactment, which are set out in detail in paragraphs (i), (ii), and (iii), are governed by the words in the first two lines "for the purpose of wrongfully obtaining information." These words (which were not in the Bill of 1889 as it passed the House of Commons, but were inserted in the House of Lords) at once create a considerable difficulty in dealing with the offences now under consideration:—

- (A.) In many cases the immediate object of a spy or secret agent may not be to obtain information, but to communicate information or give directions to a confederate, *e.g.*, a workman in the arsenal, or to do some mischief, *e.g.*, tamper with electric apparatus, or prepare for an explosion.
- (B.) It must always, except where notes or plans are actually seized, be difficult to prove that the purpose is to obtain information.

It is suggested, therefore—

- (A.) That the words should be "for the purpose of wrongfully obtaining information or for other wrongful purpose"; and
- (B.) That where any person is found in any place specified in the section where he is not entitled to be, or is found in possession of any article specified in the section which he is not entitled to have, the *onus* of showing that he is not in that place or in possession of that article for a wrongful purpose should rest with him. There are several precedents for this, particularly in the Explosive Substances Act, 1883, section 4.

No doubt if the words "for other wrongful purpose" are introduced they would cover many things beyond espionage; for instance, a person in an arsenal for the purpose of larceny would be there for a wrongful purpose; but the Act would not

* 52 & 53 Vic., c. 52.

ordinarily be used to deal with such cases, and if on any occasion it happened that a stray thief was picked up in mistake for a spy no great harm would be done.

Paragraph (i).

Of the three heads of offences created by the subsection now under consideration, the first (paragraph (i)) consists of "entering or being in any part of a place belonging to His Majesty, being a fortress, arsenal, factory, dockyard, camp, ship, office, or other like place, in which part he is not entitled to be."

This provision is too restricted as regards place:—

- (A.) The words "belonging to His Majesty" exclude a private factory where cordite is being made, and a private dockyard where a "Dreadnought" is being built.
- (B.) It is not clear that the list "fortress, arsenal, factory, dockyard, camp, ship, office," covers everything that ought to be covered, though no doubt a considerable extension is given by the words "other like place." It seems desirable to have words which will clearly include telegraph stations and lines, wireless stations, electric apparatus, and everything else which might be destroyed by explosives or otherwise at a critical moment, to the advantage of the enemy.
- (C.) It is also important to protect those points, not being military or naval works, where mischief might be done, with the help of explosives, at a critical time, e.g., bridges or viaducts likely to be used in the concentrating of troops at the moment of a hostile landing.

To meet these points (A), (B), and (C) it is suggested that the following words might be added: "Or any such place as aforesaid, whether belonging to His Majesty or not, or other structure, building, appliance, place, or position, whether belonging to His Majesty or not, the knowledge of which would, in the event of war, be *useful to an enemy*,* or which, in the event of war, might be injured or destroyed to the advantage of an enemy."†

- (D.) Further, it is not enough to deal with spies or secret agents found actually inside the fortress, &c., which is all that paragraph (i) does; nor is it enough to deal, as in paragraph (iii), with a spy or secret agent outside the fortress only if he is actually found taking a plan or sketch. It may be of the utmost value to an enemy to obtain a thorough knowledge of the outside of a fortress, arsenal, or explosive magazine without taking any sketch or plan, especially as he will be in possession of all the ordnance maps; and if an attempt were made to blow up any powder factory or bridge, it would probably be made from the outside.

It is suggested, therefore, that paragraph (i) should be extended so as to apply to any person who is found *in the neighbourhood* of any fortress, &c., "under such circumstances as give rise to a reasonable suspicion"‡ that he is there for the purpose of wrongfully obtaining information, or for any other wrongful purpose.

Paragraph (ii).

The first part of paragraph (ii) makes it an offence to obtain any document, sketch, plan, model, &c., only if the person obtaining these things is actually *in* the fortress, arsenal, &c.

It is suggested that it should be made an offence to obtain *anywhere* without lawful authority any document, sketch, &c., which in the event of war might be useful to an enemy.

Paragraphs (ii) and (iii).

The last words of paragraph (ii) and paragraph (iii) deal with the taking † of sketches and plans. The last words of paragraph (ii) make it an offence to take

* Words taken from 43 Geo. III, c. 55.

† Words taken from Explosive Substances Act, 1883, section 4 (1).

‡ To "take a sketch" here means presumably to "make a sketch." It is so interpreted by Stephen's "Digest of Criminal Law" (6th Ed., Art. 65). To take a sketch in the sense of obtaining a sketch is already made an offence, in the first part of paragraph (ii).

without lawful authority any sketch or plan of any "fortress, arsenal, factory, dockyard, camp, or ship" if the sketch or plan is taken *inside* the fortress, but it does not apply to attempts. Paragraph (iii) makes it an offence to take, or to attempt to take, a sketch or plan of any "fortress, arsenal, factory, dockyard, or camp" when this is done from outside, but it does not apply, like paragraphs (i) and (ii), to a ship. The curious results emerge that it is an offence to sketch or photograph a man-of-war if it is done inside, but not if it is done from outside; and that, on the other hand, an attempt to sketch or photograph a fortress is criminal if the attempt be made outside, but not if it be made inside.

It is suggested that, as a matter of drafting, the offence, wherever committed, of making a sketch or plan of a fortress, &c., should be contained under one heading.

It is further suggested that the paragraphs should be extended so as to apply to all the places which will be covered by paragraph (i), if amended as suggested above, and so as to apply equally inside or outside.

Thirdly, it is suggested that there should be a general provision making all attempts to commit offences under the Act punishable.

Paragraphs (b) and (c).

If paragraph (a) is extended as proposed, the effect of paragraphs (b) and (c) will be correspondingly widened; no further amendment in these paragraphs is suggested, except that the word "knowingly" should be omitted in paragraph (b), where, in view of the words which follow, "wilfully and without lawful authority," it serves no purpose except to increase the difficulty of proof.

Concluding words of subsection (1).

These words enact that the offences created by the subsection are to be misdemeanours. If they are merely misdemeanours, no power of arrest is given, and there is no power to prevent their commission by force even in an extreme case.

It is suggested, therefore, that the offences should be made felonies. There will then be power for any constable to arrest any person reasonably suspected of having committed or being about to commit an offence within the section.* There will also be power in an extreme case, if there is no other means of preventing a felony being committed, to prevent it by the use of force, and if necessary by the use of fire-arms.

As the section stands, any offence has to be tried on indictment, *i.e.*, by a jury, even though the offender admits his offence and is willing to be tried summarily.

It is suggested that, as is usual now in creating new offences, the alternative should be given of trying the offence summarily, with power to impose a less punishment than can be imposed on conviction on indictment. If the penalty on summary conviction is made "imprisonment not exceeding six (or four) months," the offender will, under the Summary Jurisdiction Act, have the right to claim trial by jury if he desires it. But probably in most cases he will prefer to be dealt with summarily, and in many cases a sentence of a few months' imprisonment (plus in the case of a foreigner expulsion†) would be a better method of dealing with the offence than trial by jury, even with severer punishment. Where the offence is tried on indictment, the punishment might well be more than one year—say two years' imprisonment or even three years' penal servitude.

Subsection (2).

The same alterations as are suggested in subsection (1) would apply here, particularly the extension of the words "fortress, arsenal," &c., to other places, the making of the offence a felony, and the provision that it may be tried summarily.

Subsection (3).

Only consequential alterations would be necessary. It would rarely be possible to prove the intention to communicate to a foreign State, but it may be well to

* If it is desired to give power to arrest *on suspicion* to any one other than a constable, an express provision is required. A person other than a constable can arrest for felony only if an offence has actually been committed, not on mere suspicion.

† The Aliens Act, 1905, provides for expulsion in the case of any offence punishable with imprisonment, whether tried summarily or on indictment.

maintain the very severe penalties which can be inflicted under this subsection when this can be proved.

Section 7 (1).

This section directs that "a prosecution for an offence against this Act shall not be instituted except by or with the consent of the Attorney-General." It is not perfectly clear what is meant by saying that a prosecution is not to be instituted except with the consent of the Attorney-General, but presumably it means that no information can be laid, summons obtained, or arrest effected without the Attorney-General's previous consent. If this is the meaning of the section, it would make it in the great majority of cases impossible to use the Act for the purpose of dealing with spies and secret agents when they are found at work. While the Attorney-General is being consulted they will no doubt leave the country, taking with them the result of their labours.

It is suggested that the consent of the Attorney-General should not be required to the apprehension or to the earlier stages of a prosecution. For this purpose it would be possible to adopt clause 3 of the Official Secrets Bill of last Session, which runs as follows:—

"A warrant for the arrest of a person guilty of an offence under the Official Secrets Acts may be issued and executed, and a person apprehended for any such offence may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of the prosecution has not been obtained, but no further or other proceedings shall be taken until such consent has been obtained."

But if the suggestion is adopted that summary procedure for offences under section 1 (1) should be allowed, it would be sufficient to direct that *no indictment* for an offence under the Act shall be preferred without the consent of the Attorney-General, allowing minor cases with the consent of the prisoner to be disposed of summarily without bringing in the Attorney-General at all.

Section 8.—Interpretation.

It should be made clear that the "obtaining" of any document, plan, sketch, &c., includes the *copying* of such document, &c., or of any *part* thereof.

It should also be made clear that the taking of a sketch of a fortress, ship, &c., includes the taking of a sketch of *any part* of the fortress, ship, &c., or of its armaments.

Additional Provisions.

Search.—No power to search is given by the Act. It is clearly desirable that such power should be given. In most of the numerous cases where power to search (*e.g.*, for stolen goods) is given a Magistrate's warrant is necessary; but possibly in this case it would be best to follow the precedent of section 73 of the Explosives Act, 1875 (incorporated in the Explosive Substances Act, 1883), and allow the authority to be given either by a Justice or by a superior officer of police.

Harbouring Spies.—It is suggested, subject to the consideration of Parliamentary difficulties, that there should be some power to deal with persons in this country who knowingly harbour spies. At present they cannot be touched except in a case, not likely ever to be capable of proof, of being actually accessory to any act of espionage which is a criminal offence.

It is suggested that any person who knowingly harbours spies, or who, having harboured spies, refuses to give information with regard to them to the police, should be guilty of an offence punishable summarily with fine or imprisonment (the maximum imprisonment should not be less than four months, so as to give right to claim trial by jury).

A spy should be defined as a person engaged in any such proceedings as constitute offences under section 1.

The foregoing are suggestions to meet what appear at first sight to be the defects in the existing law; but they require examination by those acquainted with the facts in order to ascertain, first, that they include all apprehended acts of espionage and similar hostile acts, which can properly be made punishable, and secondly, that the

inclusion of any innocent acts has been, so far as possible, avoided. It is presumed that spies who merely go about the country observing its features and mentally noting them cannot in time of peace be brought within the penal law; nor could it be made, as in Germany, a criminal offence to count the arches of a bridge or to pace the width of a road.

C. E. T.

May 11, 1909.

Official Secrets Act, 1889.

1.—(1.) (a.) Where a person for the purpose of wrongfully obtaining information—

Disclosure
of
information.

- (i.) Enters or is in any part of a place belonging to Her Majesty the Queen, being a fortress, arsenal, factory, dockyard, camp, ship, office, or other like place, in which part he is not entitled to be; or
- (ii.) When lawfully or unlawfully in any such place as aforesaid, either obtains any document, sketch, plan, model, or knowledge of any thing which he is not entitled to obtain, or takes without lawful authority any sketch or plan; or
- (iii.) When outside any fortress, arsenal, factory, dockyard, or camp belonging to Her Majesty the Queen, takes or attempts to take, without authority given by or on behalf of Her Majesty, any sketch or plan of that fortress, arsenal, factory, dockyard, or camp; or

(b.) Where a person knowingly having possession of, or control over, any such document, sketch, plan, model, or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interest of the State, to be communicated at that time; or

(c.) Where a person, after having been intrusted in confidence by some officer under Her Majesty the Queen with any document, sketch, plan, model, or information relating to any such place as aforesaid, or to the naval or military affairs of Her Majesty, wilfully and in breach of such confidence communicates the same when, in the interest of the State, it ought not to be communicated;

he shall be guilty of a misdemeanour, and on conviction be liable to imprisonment, with or without hard labour, for a term not exceeding one year, or to a fine, or to both imprisonment and a fine.

(2.) Where a person having possession of any document, sketch, plan, model, or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to Her Majesty, or to the naval or military affairs of Her Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interest of the State, to be communicated at that time, he shall be guilty of a misdemeanour, and be liable to the same punishment as if he committed an offence under the foregoing provisions of this section.

(3.) Where a person commits any act declared by this section to be a misdemeanour, he shall, if he intended to communicate to a foreign State any information, document, sketch, plan, model, or knowledge obtained or taken by him, or intrusted to him as aforesaid, or if he communicates the same to any agent of a foreign State, be guilty of felony, and on conviction be liable at the discretion of the Court to penal servitude for life, or for any term not less than five years, or to imprisonment for any term not exceeding two years with or without hard labour.

7.—(1.) A prosecution for an offence against this Act shall not be instituted except by or with the consent of the Attorney-General. . . .

Restriction
on prosecution.
Interpreta-
tions.

8. In this Act, unless the context otherwise requires—

Any reference to a place belonging to Her Majesty the Queen includes a place belonging to any department of the Government of the United Kingdom or of any of Her Majesty's possessions, whether the place is or is not actually vested in Her Majesty.

Expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model, or information itself or the substance or effect thereof only be communicated.

The expression "document" includes part of a document.

The expression "model" includes design, pattern, and specimen.

The expression "sketch" includes any photograph or other mode of representation of any place or thing. . . .

APPENDIX VI.

INFORMATION CONCERNING FOREIGNERS SUSPECTED OF BEING
ENGAGED IN ESPIONAGE IN THE UNITED KINGDOM

Note by the Secretary to the Post Office.

THE Post Office is asked to report as to the extent to which it can assist in giving systematic information concerning the correspondence of foreigners suspected of being engaged in espionage in the United Kingdom, and in reporting such cases.

1. It would be very inadvisable to give instructions that all suspicious cases observed by Post Office servants should be reported. If instructions of this character are to be effective, it would be necessary to issue them to a large number of postmasters, sub-postmasters, and others, many of them comparatively uneducated, and not of high status in the service. The instructions would certainly not remain secret; an atmosphere of suspicion would be created, and probably a large crop of reports would be produced. Moreover, these reports would have little value, since the persons making them would in most cases be incapable of judging whether the circumstances were such as to give rise to real suspicion. The reports might bring to light intelligence work of a kind which is not illegal and which could not be stopped. It may be doubted if they would bring to light cases of espionage of forts, dockyards, magazines, &c. In such cases the persons concerned are likely to take precautions, such as receiving letters through a third party.

2. It has been suggested that at places of special naval importance (Portsmouth, Plymouth, Portland, Sheerness, Chatham, Newcastle-on-Tyne, Harwich) a watch should be kept for the purpose of discovering persons who (a) receive correspondence from abroad addressed *poste restante*, and also (b) receive regular remittances from abroad in the form of money orders or postal orders, and (c) register letters for foreign addresses. It would be very difficult to institute a watch of this kind without attracting attention, since several of the staff at each office would have to be instructed, and the scrutiny would have to be applied continuously. It is probable therefore that the matter would not remain secret; and any suspected person could easily arrange to post and to receive his letters in such a manner as to escape the scrutiny.

If it were thought to be indispensable, a watch of the kind suggested could be kept; but it is, in the opinion of the Post Office, undesirable to employ these means, if others less open to objection can be found.

3. There may be cases in which grave suspicion exists, and the matter is of sufficient importance to make it necessary that the suspect's letters should be opened, notwithstanding the strong objections to interfering with private letters. As explained in the previous Memorandum letters can be intercepted and opened under the procedure which the existing law provides. The responsibility of issuing a warrant rests with the Secretary of State. When a warrant is issued the Post Office takes all necessary steps for executing it.

4. There may be other cases in which, though it is not thought necessary to open letters, it is believed that important information may be obtained from an inspection of the envelopes of letters received or posted by a suspected person.

On general grounds of policy, the Post Office is averse to employing this method, except where the information is indispensable and other methods of obtaining it have been tried and have failed. In such cases the matter would usually be in the hands of the police; and if the police are clearly of opinion that information of importance can be obtained from the outside of a suspect's letters, the Post Office would be prepared

to assist. It is desirable that any requests for such assistance should come from the police, and not from the naval or military authorities, because less attention would be attracted if the matter appeared to be one of ordinary criminal investigation. It is also desirable that the requests should be made to the Secretary personally, and not to local officers.

The assistance might take the form of photographing or tracing the envelopes. This could be done without attracting much attention if it were limited to a short period, say a day or two; but even in that case several persons would have to know what was being done.

In the case of letters posted by the suspect, the difficulty of identifying the letters is considerable, unless a specimen of handwriting can be given. It can sometimes be arranged to clear a letter-box immediately after the suspect has been observed to post letters. Other methods of identification may be suggested by the police, but these must vary according to the circumstances of each case.

If the treatment of the letters is such as to cause delay, a warrant from the Secretary of State is necessary.

5. It has also been suggested that a watch should be kept at the Returned Letter Office on letters posted in this country and returned from Germany as undeliverable, and that any such letters which contain maps, plans, or sketches should be examined further, in order to see whether they are of a suspicious character.

This could be done without much difficulty. It would probably suffice to instruct one person besides the Controller of the Returned Letter Office. The risk of disclosure is therefore not great.

H. B. S.

May 26, 1909.

APPENDIX VII.

SUGGESTIONS FOR AMENDING THE OFFICIAL SECRETS ACT, 1889.

Note by Sir E. Henry.

THE Home Office memorandum suggests somewhat extensive modifications and an expansion of various sections of the Official Secrets Act which could only be conveniently carried out by revoking the existing and passing a fresh Act; but, at the present time, there might be considerable difficulty in piloting through a Bill which would, necessarily, contain provisions that must provoke much criticism and some opposition.

2. The principal object in view, viz., the improvement of the procedure, can be more easily attained by adding the following two sections to the existing Act:—

- (a.) It shall be lawful for any police officer to arrest without warrant any person whom he may find committing an offence under this Act, or whom he shall have reasonable cause to suspect of having committed or having attempted to commit or being about to commit an offence under this Act.
- (b.) Any Justice of the Peace, if satisfied by information on oath that there is reasonable ground to believe that an offence against this Act has been or is about to be committed, may, in his discretion, at any time grant a warrant under his hand by virtue whereof it shall be lawful for any constable named in such warrant to enter at any time, and if needs be by force, and as well on Sundays as on other days, any place named in such warrant, and every part thereof, and to search the same and every person found therein, and to seize, take possession of, and remove any document, sketch, plan, model, writing, or anything of a like nature which he may find therein or on such person, and with regard to or in connection with which he has reasonable

ground to believe that an offence against this Act has been or is about to be committed.

If, under the terms of any such warrant as aforesaid, any such document, sketch, plan, model, or writing as is above mentioned or anything of a like nature is seized or taken possession of, the person in whose care, charge, or custody, or the occupier of the premises in which the same may have been found shall be deemed to have been in possession of and to have obtained such article for a wrongful purpose or object unless and until the contrary is proved.

If this suggestion is adopted and carried out, the police would get all the power they need to enable them to be an effective agency.

3. The words "or one of His Majesty's Principal Secretaries of State" should be added after the words "by or with the consent of the Attorney-General" in section 7. The sanction of the Secretary of State is more quickly obtained than that of an Attorney-General, and as a prosecution may be said to have been initiated when an arrest is made, the necessity for obtaining sanction with the least practicable delay is obvious.

4. The wording of the present Act would be improved by substituting for the words "misdemeanour" and "felony" the words "an offence against this Act."

5. It will be remembered that in its present form the Act has proved so unworkable that recourse has been had to it only once in twenty years.

E. R. H.

June 9, 1909.

APPENDIX VIII.

Note by the Secretary.

SUFFICIENT evidence has probably been produced to the Sub-Committee to enable them to decide whether the Admiralty and the War Office should be brought into official relations with the Police and Postal authorities with a view to the movements of aliens suspected of being spies or secret service agents being properly supervised.

2. "The Official Secrets Act, 1889," is the code from which we derive our present power of dealing with espionage. Two memoranda (C.I.D. Papers S 5 and S 7) have been circulated to the Sub-Committee which draw attention to the desirability of this Act being amended.

3. The two chief amendments proposed by Sir E. Henry (C.I.D. Paper S 7), both of which are recommended also by the Home Office, would, if embodied in the Act, greatly add to the powers at present possessed by the Police of dealing with espionage, since they would not only facilitate the arrest of suspected persons, but would also give the powers to search which are clearly desirable, but which are not afforded by the Act of 1889.

4. The amendments proposed by Sir E. Henry would not, however, have their full value unless section 1 of the Act which defines the offence of espionage was also amended in the manner suggested in the Home Office Memorandum. For instance, if a spy in a private dockyard where a battleship is being built commits no offence, neither the power of arrest nor the power of search would apply in his case.

5. A Bill for amending the Official Secrets Act was introduced during 1908. This Bill has been circulated to the Sub-Committee (C.I.D. Paper S 4). It contains clauses relating to the publication of certain documents and information which caused it to attract a good deal of anxious attention from the press. After the first reading in the House of Lords on the 16th March, 1908, the Bill was not proceeded with.

6. A Bill amending "The Official Secrets Act, 1889," as proposed by the Home Office and Sir E. Henry, would have a better chance of becoming law than the similar Bill of 1908. It need contain no reference to the publication of documents or information, a subject which should be dealt with in a separate Bill when negotiations with the representatives of the press have resulted in an agreement. It would therefore not be of so controversial a nature or excite such opposition as would be caused by any clause which might be suspected of interfering with the liberties of the press.

7. The question of the control of the press appears to be outside the terms of reference of the Sub-Committee, but the draft of a Bill to provide for the control of the publication of naval and military information in cases of emergency has been circulated to the Sub-Committee (C.I.D. Paper S 4).

8. With a view to systematising the machinery for dealing with spies and foreign agents, the Sub-Committee at the last meeting requested certain of its members to consider the question of the formation of a Secret Service Bureau. These members have issued a report containing a definite suggestion as to the best manner in which this can be done. To ensure secrecy this report has not been printed, and only one typed copy has been made. This will be laid before the Sub-Committee at the next meeting.

9. The Post Office Memorandum (C.I.D. Paper S 6) deals with the various means by which the Postal authorities can assist in detecting suspected persons, and in obtaining information regarding them. The Memorandum also shows good reasons why the Post Office should not be asked to exert the powers that it possesses unless there is urgent reason for their doing so. Any fresh legislation with the object of giving more power to the Postal authorities with regard to opening or detaining letters would probably be undesirable, as calculated to shake the confidence that the public at present place in the Department.

It might, however, be desirable for the Postmaster-General to nominate an official in his Department with whom the Admiralty and the War Office could communicate direct on the subject of secret service.

10. It is for the consideration of the Sub-Committee whether the proposed Secret Service Bureau and the passing of a Bill containing the amendments to "The Official Secrets Act, 1889," suggested by the Home Office and Sir E. Henry, would give the Admiralty and the War Office the additional powers that they require for effectively dealing with espionage.

11. Sir E. Henry stated at the last meeting of the Sub-Committee that he was of the opinion that some of our magazines are inadequately guarded, and would not be secure against damage from a determined attempt by two or three men made during the short time immediately preceding the declaration of hostilities. In his view, it is desirable to have this matter looked into and reported on by a small Committee of experts.

12. It is for the Sub-Committee to decide whether it is desirable that they should make any report with a view to instituting the inquiry suggested by Sir E. Henry. Such an inquiry might possibly include dockyards, large oil-stores, cable landing stations, wireless stations, private ship-building yards, and other vulnerable points, the damaging of which, previous to hostilities breaking out, would be of advantage to an enemy.

C. L. O.

June 15, 1909.

APPENDIX IX.

ADDITIONAL CASES OF ALLEGED GERMAN ESPIONAGE.

THE following cases of alleged German espionage have been reported to the Director of Military Operations since those contained in C.I.D. paper S-1 were circulated to the members of the Sub-Committee. It is noteworthy that several of these cases have been reported by the police authorities, whereas none of those in the previous list came through that source.

*General Staff, War Office,
June 23, 1909.*

I.—CASES OF ALLEGED RECONNAISSANCE WORK BY GERMANS.

Date of Report.	Informant.	Details.
1909. 7th April..	Lieutenant-Colonel, General Staff	Two Germans sketching and asking questions <i>re</i> water near Holwell, 18 miles due west of Oxford.
19th „ ..	Coastguard	Two Germans surreptitiously take soundings off Holyhead; they decamp when detected.
20th „ ..	Farmer, Bulcamp, Suffolk ..	Two Germans sketching and enquiring about the country.
27th „ ..	Officer, Middlesex Regiment	Von Selchow, a German naval officer, reconnoitres Alderney under the pretence of learning English, which he knows well.
13th May	Author	Two Germans sketch and reconnoitre the railway station at Hatfield.
19th „ ..	Police	Three Germans reconnoitring at Dersingham and West Newton (Norfolk).
21st „ ..	C. G., of Gateshead	Attempt to engage C. G., a foreman millwright, who is a German, but has lived many years in England, as a German secret service agent.
4th June..	Tradesman, Co. Waterford (confirmed by Irish Constabulary)	Two German officers examine the harbour of Youghal under pretence of fishing in boat owned by a Portuguese resident.
5th „ ..	Chief Constable of East Riding of Yorkshire	Two Germans of military appearance stay at hotel at Bridlington in Yorkshire. Maps with military details added and reconnaissance work seen in their room by proprietor.
18th „ ..	Police	Three Germans reconnoitring the country with field glasses, and maps, and note-books. Decline to use local maps, saying their own are much more detailed. Stay one night at Sleights (near Whitby).
20th „ ..	Police	A German enquires the depths of certain waterways from coast-guards at Whitby and Sunderland. Military appearance. Said he was a motor-car agent, but, according to garage proprietor, knew nothing about motors.

II.—HOUSES OCCUPIED BY GERMANS IN SUSPICIOUS CIRCUMSTANCES.

Address.	Informant.	Details.
Sun Hotel, Chatham ..	Lieutenant. . .	Proprietor, H. A. Klockenbosch.
The Homestead, Banstead, Surrey	Landed proprietor ..	Let to Germans, who took it without inspection and at an excessive rent "because of the view."
Post-office, Old Charlton, Kent	A retired military man	Postmistress has married a German named Kerweder, who lives in the post-office.
Royal Hotel, Ventnor, Isle of Wight	A baronet ..	Kept by a German; German waiters. Much frequented by German naval officers.
"Märchen," Cliff Road, Hornsea	Officer, Yorkshire Yeomanry. (Confirmed by investigation)	Inhabited by a German reserve officer named Suhren, who reconnoitres the coast, and is frequently visited by military compatriots.

